# THE
# DEATH DUTIES

BY

ROBERT DYMOND

OF THE ESTATE DUTY OFFICE

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# THE
# DEATH DUTIES

COMPRISING

ESTATE, SETTLEMENT ESTATE,
LEGACY, SUCCESSION,
AND
INCREMENT VALUE DUTIES

WITH

DECIDED CASES, FORMS, AND NOTES ON PRACTICE

BY

ROBERT DYMOND
OF THE ESTATE DUTY OFFICE, SOMERSET HOUSE, SOLICITOR

JORDAN & SONS, LIMITED
116 AND 117 CHANCERY LANE, LONDON, W.C.
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1913

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# PREFACE.

IT is perhaps necessary to give some explanation to justify this addition to the number of books on the Death Duties. In the first place, the importance of the Death Duties as a tax on capital and as a source of revenue has been largely increased by recent legislation. Their long history and the technicalities of the incidence of Legacy Duty and Succession Duty on the one hand and Estate Duty on the other have evolved a system of considerable complexity, and it is a matter of difficulty to obtain a clear idea of the subject.

Most of the more recent works deal with Estate Duty only, and it was thought that there was an opening for a book of moderate size giving a concise but practical account of all the Death Duties as they exist at the present time. Such a work could not have been carried out on the ordinary plan of setting out the decided Cases and Sections of the Acts and making notes thereon. The Author has therefore attempted to give the essence of the matter and to put it into a compact form that may be of practical use, not only to the lawyer, but also to the layman and the student. The winding path by which the present system has been attained has not been minutely followed, and the text has thus been freed from references to superseded duties, repealed law, and obsolete decisions.

At the same time the necessity for authority in support of the statements made has been kept strictly in view, and detailed references to the various Acts and Judicial Decisions are given at the foot of each page. The Index also is somewhat more elaborate than is usual for a book of this size.

All the Duties payable on Death are dealt with in one volume, and thus their inter-dependence and the differences in incidence are made clear.

The book has been written from a practical point of view. In almost all cases illustrations are given, and the Author has endeavoured to convey the result of many years' experience of Death Duty Law and Practice both inside and outside the Estate Duty Office.

It must be understood that the Author is solely responsible for the statements in the book, and that they possess no official authority.

In conclusion the Author wishes to render grateful thanks to Mr. J. Webster Brown, of the Estate Duty Office, Solicitor, and author of a book on the Estate Duty, for valuable assistance and advice, and to Mr. F. P. Clark, of the same Office, for kindly reading the proofs.

R. DYMOND.

Estate Duty Office,
Somerset House,
*June, 1913.*

# CONTENTS.


PAGE

PREFACE - - - - - - vii

TABLE OF CASES - - - - - xi

TABLE OF STATUTES - - - - xxix

INTRODUCTION - - - - - 1

PART I.

ESTATE DUTY.

PRELIMINARY - - - - - - 3

CHAPTER I. THE PROPERTY UPON WHICH IT IS PAYABLE - - - - 6

„ II. RATES AND AMOUNT - - - 67

„ III. PERSONS ACCOUNTABLE - - 97

„ IV. EXEMPTIONS - - 117

„ V. SETTLEMENT ESTATE DUTY - - 129

„ VI. PRACTICE - - - 139

## PART II.

## LEGACY DUTY.

PAGE

PRELIMINARY - - - - - - 165

CHAPTER VII. THE PROPERTY UPON WHICH IT IS PAYABLE - - - - 168

„ VIII. RATES AND AMOUNT - - - 177

„ IX. PERSONS ACCOUNTABLE - - 202

„ X. EXEMPTIONS - - - - 213

„ XI. PRACTICE - - - - 222

## PART III.

## SUCCESSION DUTY.

PRELIMINARY - - - - - - 235

CHAPTER XII. THE PROPERTY UPON WHICH IT IS PAYABLE - - - - 237

„ XIII. RATES AND AMOUNT - - - 254

„ XIV. PERSONS ACCOUNTABLE - - 286

„ XV. EXEMPTIONS - - - - 294

„ XVI. PRACTICE - - - - 302

## PART IV.

## INCREMENT VALUE DUTY.

CHAPTER XVII. - - - - - - 311

INDEX - - - - - - - 315–358

# TABLE OF CASES.


PAGE

Advocate-General *v.* Oswald [1848], 5 S. S. C. 2nd series, 969 191

Advocate-General, Thomson *v.* - - - 173, 220

Alexander's Trustees, Lord Advocate *v.* - - - - 87, 88

Amiss *v.* Witt, 33 Beav. 619 - - - - 22

Ashby's Cobham Brewery, *re* "The Crown"; Ashby's Staines Brewery, *re* "The Hand & Spear" [1906], 2 K. B. 754; 95 L. T. 260 - - - - 152

Atlas Insurance Co., Haas *v.* - - - - 38

Attorney-General *v.* Beech, [1899] A. C. 53; 68 L. J. Q. B. 130; 79 L. T. 565 - - - - 49

Attorney-General *v.* Boden, [1912] 1 K. B. 539; 81 L. J. K. B. 704; 105 L. T. 247 - - - - 27, 146

Attorney-General *v.* Brackenbury [1863], 1 H. & C. 782; 32 L. J. Ex. 108 - - - - - 176

Attorney-General, Braybrooke *v.* - - - - 283

Attorney-General *v.* Brown [1898], 79 L. T. 572; 46 W. R. 145 - - - - - - 240

Attorney-General *v.* Bruce, [1901] 2 K. B. 391; 70 L. J. K. B. 767; 85 L. T. 114 - - - 204, 216

Attorney-General *v.* Campbell [1872], L. R. 5 H. L. 524; 41 L. J. Ch. 611 - - - - - 12, 251

Attorney-General *v.* Cavendish [1810], Wightw. 82; 12 R. R. 716 - - - - - 185, 186, 229

Attorney-General *v.* Cecil [1870], L. R. 5 Ex. 263; 39 L. J. Ex. 201; 23 L. T. 20 - - - 277, 283

Attorney-General *v.* Clarkson, [1900] 1 Q. B. 156; 69 L. J. Q. B. 81; 81 L. T. 617 - - - - 131

Attorney-General *v.* Cleave [1873], 31 L. T. 86 - - 206

Attorney-General *v.* Cobham [1904], 90 L. T. 816; 20 T. L. R. 337 - - - - - - 28

PAGE

Attorney-General *v.* Coulson, [1899] 2 Q. B. 253; 68 L. J. Q. B. 779; 81 L. T. 121 - - - - 133

Attorney-General *v.* Dardier [1883], 11 Q. B. D. 16; 52 L. J. Q. B. 329; 48 L. T. 582 - - - 187

Attorney-General *v.* Delaney [1876], Ir. R. 10 C. L. 104 218

Attorney-General *v.* Dobree, [1900] 1 Q. B. 442; 69 L. J. Q. B. 223; 81 L. T. 607 - - - - 40

Attorney-General *v.* Dodington, [1897] 2 Q. B. 373; 66 L. J. Q. B. 684; 77 L. T. 299 - - - 57, 61

Attorney-General *v.* Eyres, [1909] 1 K. B. 723; 78 L. J. K. B. 384; 100 L. T. 396 - - - 49, 120, 299

Attorney-General *v.* Fairley, [1897] 1 Q. B. 698; 66 L. J. Q. B. 454; 76 L. T. 526 - - - - 131

Attorney-General *v.* Felce [1894], 10 T. L. R. 337 - 12, 252

Attorney-General *v.* Floyer [1862], 9 H. L. C. 477; 31 L. J. Ex. 404; 7 L. T. 47 - - - - - 283

Attorney-General *v.* Giles [1860], 5 H. & N. 255; 29 L. J. Ex. 176; 1 L. T. 553 - - - - - 207

Attorney-General *v.* Glossop, [1907] 1 K. B. 163; 95 L. T. 823; 76 L. J. K. B. 199 - - - 51, 54, 121

Attorney-General *v.* Grey, [1900] A. C. 124; 69 L. J. Q. B. 308; 82 L. T. 62 - - - - - 27, 29

Attorney-General *v.* Hawkins, [1901] 1 K. B. 285; 70 L. J. K. B. 195; 83 L. T. 531 - - - - 40

Attorney-General *v.* Hay, [1899] 2 Q. B. 245; 68 L. J. Q. B. 557; 80 L. T. 712 - - - - - 56

Attorney-General *v.* Holbrook [1823], 3 Y. & J. 114; 12 Pr. 407 - - - - - - - 170

Attorney-General *v.* Holford [1815], 1 Pr. 427; 16 R. R. 737 202

Attorney-General *v.* Hope's Executors [1868], Ir. R. 2 C. L. 368 218

Attorney-General *v.* Jameson, *re* Jameson, deceased - - 143

Attorney-General *v.* Jewish Colonization Association, [1901] 1 K. B. 123; 70 L. J. K. B. 101; 83 L. T. 561 13, 120, 252

Attorney-General *v.* Johnson, [1903] 1 K. B. 617; 72 L. J. K. B. 323; 88 L. T. 445 - - - 26, 240, 298

Attorney-General *v.* Johnson and Others, [1907] 2 K. B. 885; 76 L. J. K. B. 1150; 97 L. T. 720 - 12, 13, 15, 119, 253

Attorney-General, Lethbridge *v.* - - - - 40, 46

PAGE

Attorney-General *v.* Littledale [1871], L. R. 5 H. L. 290; 40 L. J. Ex. 241; 24 L. T. 921 - - - 276, 296

Attorney-General *v.* Lordan, *re* Crowley [1906], 40 I. L. T. 98; 49th Inland Revenue Report 129 - - 113, 288

Attorney-General *v.* Malkin [1845], 2 Phil. 64; 16 L. J. Ch. 99; 10 Jur. 955 - - - - - - 206

Attorney-General *v.* Mander [1896], 65 L. J. Q. B. 246; 44 W. R. 413; 74 L. T. 103 - - - - 249

Attorney-General *v.* Maxwell [1860], 10 I. C. L. R. 262 - 206

Attorney-General *v.* Metcalfe [1851], 6 Ex. 26; 20 L. J. Ex. 329; 16 L. T. 417 - - - - - 202

Attorney-General *v.* Milne, [1913] 1 K. B. 337; 82 L. J. K. B. 279 - - - - - - 135

Attorney-General *v.* Montagu, [1904] A. C. 316; 73 L. J. K. B. 707; 90 L. T. 726 - - - - 91

Attorney-General *v.* Montefiore [1888], 21 Q. B. D. 461; 59 L. T. 534 - - - - - - 245

Attorney-General *v.* Montefiore, 52nd Inland Revenue Report, page 55 - - - - - - 111, 212, 290

Attorney-General *v.* Murray, [1904] 1 K. B. 165; 73 L. J. K. B. 66; 89 L. T. 710 - - - - - 40

Attorney-General *v.* New York Breweries Co., [1899] A. C. 62; 68 L. J. Q. B. 135; 79 L. T. 568 - 98, 104, 203, 206

Attorney-General, Northumberland *v.* - - 278, 279

Attorney-General *v.* Owen, [1899] 2 Q. B. 253; 68 L. J. Q. B. 779; 81 L. T. 121 - - - - - - 133

Attorney-General *v.* Partington [1869], L. R. 4 H. L. 100; 38 L. J. Ex. 205; 21 L. T. 370 - - - - 58

Attorney-General *v.* Peek and Others, [1912] 2 K. B. 192; 81 L. J. K. B. 574; 106 L. T. 630 - - - 9, 125

Attorney-General *v.* Penrhyn [1900], 83 L. T. 103; 16 T. L. R. 464 - - - - - - - - 53, 54

Attorney-General *v.* Pickard [1840], 6 M. & W. 348; 9 L. J. Ex. 329 - - - - - - 175

Attorney-General *v.* Robertson, [1893] 1 Q. B. 293; 62 L. J. Q. B. 282; 68 L. T. 371 - - - - 282

Attorney-General *v.* Robinson, [1901] 2 Ir. R. 67 - - 40

PAGE

Attorney-General *v.* Seccombe, [1911] 2 K. B. 688; 80 L. J. K. B. 913; 105 L. T. 18 - - - 29, 65, 119

Attorney-General *v.* Sefton [1865], 11 H. L. C. 257; 34 L. J. Ex. 98 - - - - - - - 271

Attorney-General *v.* Selborne, [1902] 1 K. B. 388; 71 L. J. K. B. 289; 85 L. T. 714 - - - 245, 281

Attorney-General *v.* Sibthorpe [1858], 3 H. & N. 424; 28 L. J. Ex. 9 - - - - - - 283

Attorney-General *v.* Smith Marriott, [1899] 2 Q. B. 595; 69 L. J. Q. B. 59; 81 L. T. 359 - - - - 121

Attorney-General *v.* Smythe [1862], 9 H. L. C. 498; 31 L. J. Ex. 404; 7 L. T. 47 - - - - - 283

Attorney-General *v.* Strange, [1898] 2 Q. B. 39; 67 L. J. Q. B. 629; 78 L. T. 516 - - - 54, 127

Attorney-General *v.* Upton [1866], L. R. 1 Ex. 224; 35 L. J. Ex. 489; 14 L. T. 334 - - - - - 246

Attorney-General *v.* Wack, *Times*, 14th June, 1909 - - 105

Attorney-General *v.* Wade, [1910] 1 K. B. 703; 79 L. J. K. B. 569; 102 L. T. 594 - - - - - 198

Attorney-General *v.* Walker, *re* Reversionary Interest Society, *Times*, 14th May, 1896 - - - - - 126

Attorney-General, Wallace *v.* - - - - 251

Attorney-General, Winans *v.* - - - - 11, 220

Attorney-General, Winans *v.* - - - - 15

Attorney-General, Wolverton *v.* - - - - 277

Attorney-General *v.* Wood, [1897] 2 Q. B. 102; 66 L. J. Q. B. 522; 76 L. T. 654 - - - - 51, 52, 121

Attorney-General for Ireland, Cullen *v.* - - - 176

Austin *v.* Mead, *re* Mead - - - - - 21

Avery, *re*, Vincent *v.* Avery, [1913] 1 Ch. 208; 108 L. T. 1 - 86

Awdry *v.* Cayley, *re* Cayley - - - - - 136

Baily, Snellgrove *v.* - - - - - - 22

Bankes, Floyer *v.* - - - - - - 239

Barksdale *v.* Gilliatt [1818], 1 Swanst. 562 - - - 189

Barnes *v.* Rowley, 3 Ves. Jun. 305 - - - 194

Barnewell, Wright *v.* - - - - - 207

Bartholomew *v.* Menzies, *re* Weston - - - - 22

PAGE

Beal *v.* Baron Grimthorpe, *re* Grimthorpe - - - 98
Beech, Attorney-General *v.* - - - - - 49
Belfast Banking Co., Cassidy *v.* - - - - 22
Berry *v.* Gaukroger, [1903] 2 Ch. 116; 72 L. J. Ch. 435; 88 L. T. 521 - - - - - 58, 60, 105
Birch, Thompson *v.* - - - - - - 251
Birtwhistle *v.* Vardill, *re* Doe, deceased - - - 284
Boden, Attorney-General *v.* - - - - - 27, 146
Bogie, Lord Advocate *v.* - - - - - 174
Bolton's Settled Estates, *re*, [1904] 2 Ch. 289; 73 L. J. Ch. 688; 91 L. T. 259 - - - - - 65
Bouts *v.* Ellis, 4 De G. M. & G. 249; 17 Jur. 585; 1 W. R. 400 22
Bowra *v.* Rhodes [1862], 10 W. R. 747 - - 196, 208
Bowring, Standing *v.* - - - - - 34
Brackenbury, Attorney-General *v.* - - - - 176
Braybrooke *v.* Attorney-General [1861], 9 H. L. C. 150; 31 L. J. Ex. 177; 4 L. T. 218 - - - - 283
Brown, Attorney-General *v.* - - - - - 240
Bruce, Attorney-General *v.* - - - - 204, 216
Bryan *v.* Mansion [1857], 26 L. J. Ch. 510; 3 Jur. (N. S.) 473 208
Bullmore, *in re*, Bullmore *v.* Wynter, 22 Ch. D. 619; 52 L. J. Ch. 456; 48 L. T. 309 - - - - - 284
Burrows *v.* Cottrell [1830], 3 Sim. 375 - - - 190
Byne *v.* Currey [1834], 2 Cr. & Mee. 603; 3 L. J. Ex. 177 - 190

Campbell, *re*, [1902] 1 K. B. 113; 71 L. J. K. B. 160; 85 L. T. 708 - - - - - - 133
Campbell, Attorney-General *v.* - - - - 12, 251
Cartwright *v.* Del Balzo, *re* Orford - - - 102, 108
Cassidy *v.* Belfast Banking Company [1887], 22 L. R. Ir. 68 22
Cavendish, Attorney-General *v.* - - - 185 186, 229
Cawthorne, *re*, [1848], 12 Beav. 56; 18 L. J. Ch. 116 - 211
Cayley, *re*, Awdry *v.* Cayley, [1904] 2 Ch. 781; 74 L. J. Ch. 31; 91 L. T. 743 - - - - - - 136
Cecil, Attorney-General *v.* - - - - 277, 283
Cheeseman, Clements *v.* - - - - - 21
Cholmondeley, *re*, [1832], 1 Cro. & M. 149; 2 L. J. Ex. 65 - 174

PAGE

Cigala's Settlement Funds [1878], 7 Ch. D. 351; 47 L. J. Ch. 166; 38 L. T. 439 - - - - 13, 20, 252

Clark, *re*, McKechnie *v.* Clark, [1904] 1 Ch. 294; 89 L. T. 736; 73 L. J. Ch. 188 - - - - - 14

Clarkson, Attorney-General *v.* - - - - 131

Clark Wm., *re*, [1906], 40 Ir. L. T. R. 117 - - - 27

Cleave, Attorney-General *v.* - - - - - 206

Clements *v.* Cheeseman [1884], 27 Ch. D. 631; 54 L. J. Ch. 158 - - - - - - - 21

Cobham, Attorney-General *v.* - - - - 28

Cochrane, *in re*, [1906] 2 I. R. 200 - - - - 30

Cochrane *v.* Moore [1890], 25 Q. B. D. 57; 63 L. T. 153 - 31

Coleman, Horne *v.* - - - - - - 207

Commissioner of Stamp Duties *v.* Salting [1907], A. C. 449; 97 L. T. 225; 76 L. J. P. C. 87 - - - 11

Commissioners of Inland Revenue, Cowley *v.* - 87, 90, 280

Commissioners of Inland Revenue *v.* Delancey - - 201

Commissioners of Inland Revenue, Lawson *v.* - - 12

Commissioners of Inland Revenue *v.* Priestley, *in re* Studdert [1901], A. C. 208; 84 L. T. 700 - - - 61

Commissioners of Inland Revenue, Richardson *v.* - - 40

Cook *v.* Culverhouse, *re* Culverhouse - - - 106, 113, 263

Cooper, *re* Wm. Spencer, Poë *v.* Spencer-Cooper, [1908] 1 Ch. 130; 77 L. J. Ch. 64; 98 L. T. 344 - - - 108

Cooper-Dean *v.* Stevens, *re* Dean - - - - 171

Cooper *v.* Day [1817], 3 Mer. 154 - - - - 190

Cooper *v.* Trewby [1860], 28 Beav. 194; 8 W. R. 299 287, 291

Cottrell, Burrows *v.* - - - - - - 190

Coulson, Attorney-General *v.* - - - - 133

Cowley *v.* Commissioners of Inland Revenue, [1899] A. C. 198; 68 L. J. Q. B. 435; 80 L. T. 361 - - 87, 90, 280

Coxwell's Trusts, *re*, Kinloch Cooke *v.* Public Trustee, [1910] 1 Ch. 63; 79 L. J. Ch. 62; 101 L. T. 627 - - 108

Crow *v.* Robinson [1862], 4 De G. F. & J. 337; 31 L. J. Ch. 516; 6 L. T. 372 - - - - - 197

"Crown," Cobham, *re* The, *ex parte* Ashby's Cobham Brewery Company, Limited - - - - - 152

PAGE

Cullen *v.* Attorney-General for Ireland [1866], L. R. 1 H. L. 190; 14 L. T. 644 - - - - - - 176

Culverhouse, *re*, Cook *v.* Culverhouse, [1896] 2 Ch. 251; 65 L. J. Ch. 484; 74 L. T. 347 - - - 106, 113, 263

Cunningham, *ex parte* [1884], 13 Q. B. D. (C. A.) 418; 53 L. J. Ch. 1067; 51 L. T. 447 - - - - 221

Currey, Byne *v.* - - - - - - 190

Dardier, Attorney-General *v.* - - - - 187

Dawkins *v.* Tatham [1829], 2 Sim. 492 - - - 189

Dawson *v.* Hearn, 1 R. & M. 606; 9 L. J. (O. S.) Ch. 249 - 195

Day, Cooper *v.* - - - - - - - 190

Dean, *re*, Cooper Dean *v.* Stevens [1889], 41 Ch. D. 552; 58 L. J. Ch. 693; 60 L. T. 813 - - - 171

De Beers Consolidated Mines, Limited *v.* Howe [1906], A. C. 455; 95 L. T. 221 - - - - 15

De Lancey *v.* Inland Revenue Commissioners [1870], L. R. 5 Ex. 102; 39 L. J. Ex. 76 - - - - 201

Delaney, Attorney-General *v.* - - - - 218

Del Balzo, Cartwright *v.*, *re* Orford - - - 102, 108

Dixon, *re*, Penfold *v.* Dixon [1902], 1 Ch. 248; 71 L. J. Ch. 96; 85 L. J. 622 - - - - - 100

Dobree, Attorney-General *v.* - - - - - 40

Dodington, Attorney-General *v.* - - - - 57, 61

Doe, deceased; Birtwhistle *v.* Vardill [1840], 7 Cl. & Fin. 895; 9 Bli. N. S. 32 - - - - - 284

Donelan's Estate, *re*, [1902] 1 I. R. 109 - - 111, 288

Dotterill, Gosden *v.* - - - - - - 189

Ducroz, Stokes *v.* - - - - - 11, 15, 169

Duffield *v.* Elwes [1827], 1 Bligh. N. S. 497 - - 22

Dugdale *v.* Meadows [1870], L. R. 6 Ch. 501; 40 L. J. Ch. 140; 24 L. T. 113 - - - - - 245

Duncannon *v.* Manchester, *re* Consuelo Duchess of Manchester 99

Dundas's Trustees *v.* Dundas's Trustees, [1912] S. S. C. 375 - 88, 136

Duppa, *in re*, Fowler *v.* Duppa, [1912] 2 Ch. 445; 81 L. J. Ch. 737; 107 L. T. 522 - - - - 197

Dyet, *re*, Morgan *v.* Dyet [1903], 87 L. T. 744 - 105, 136

PAGE

Egmont's Settled Estates, *re*, Lefroy *v.* Egmont, [1912] 1 Ch. 251; 81 L. J. Ch. 250; 105 L. T. 292 - - - 108
Ellis, Bouts *v.* - - - - - - 22
Elwes, *re*, [1858], 3 H. L. N. 719; 28 L. J. Ex. 46 - 269, 304
Elwes, Duffield *v.* - - - - - - 22
Ewin, *re*, [1830], 1 Cro. & Jer. 151; 1 Tyr. 92 - - 173
Eyre, Colonel, deceased, *re*, [1907] 1 K. B. 331; 76 L. J. K. B. 227; 96 L. T. 236 - - - - 9, 83, 146
Eyres, Attorney-General *v.* - - - - 49, 120, 299
Eyre *v.* Monro [1857], 26 L. J. Ch. 757; 5 W. R. 870; 3 K. & J. 305 - - - - - - 172

Fairley, Attorney-General *v.* - - - - 131
Felce, Attorney-General *v.* - - - - - 12, 252
Fischer *v.* Seafield [1825], 1 S. S. C., 1st series, page 685 - 191
Fitzhardinge, *re*, Fitzhardinge *v.* Jenkinson [1899], 80 L. T. 376; 15 T. L. R. 225 - - - - - 108
Fleming (*see* Lord Advocate *v.* Robertson) - - 39, 244, 300
Floyer *v.* Attorney-General - - - - - 283
Floyer *v.* Bankes [1863], 3 De G. J. & S. 306; 33 L. J. Ch. 1; 9 L. T. 353 - - - - - - 239
Foley, *re*, Lady Mary, *Times*, 18th May, 1898 - 127, 128
Forbes *v.* Forbes [1854], Kay 341; 2 Eq. R. 178; 23 L. J. Ch. 724 - - - - - - 220
Forbes *v.* Steven [1870], L. R. 10 Eq. 178; 22 L. T. 703; 39 L. J. Ch. 485 - - - - - - 11, 169
Ford *v.* Ruxton [1844], 1 Coll. 403 - - - - 189
Foster *v.* Ley [1835], 2 Bing. N. C. 269; 2 Scott 438 170, 203, 208
Fowkes *v.* Pascoe [1875], L. R. 10 Ch. 343; 32 L. T. 545; 44 L. J. Ch. 367 - - - - - - 34
Fowler *v.* Duppa, *in re* Duppa - - - - 197
Franklin, Pennell *v.*, *re* White - - - - 172
Freckleton's Judicial Factor, Lord Advocate *v.* - - 191
Fryer *v.* Morland [1876], 3 Ch. D. 675; 45 L. J. Ch. 817; 35 L. T. 458 - - - - - - 239

PAGE

Gardiner, Hacket *v.*, *re* Hacket - - - - 108
Gaukroger, Berry *v.* - - - - - 58, 60, 105
Giles, Attorney-General *v.* - - - - - 207
Gilliatt, Barksdale *v.* - - - - - 189
Glossop, Attorney-General *v.* - - - 51, 54, 121
Gordon, Lord Advocate *v.* - - - - - 262
Gosden *v.* Dotterill [1832], 1 Mylne & K. 56 - - 189
Grant, *re*, Walker *v.* Martineau [1883], 31 W. R. 703; 52 L. J. Ch. 552; 48 L. T. 937 - - - - - 132
Gray, *re*, Gray *v.* Gray, [1896] 1 Ch. 620; 65 L. J. Ch. 462; 74 L. T. 275 - - - - - - 88, 154
Grey, Attorney-General *v.* - - - - - 27, 29
Grey *v.* Stamford, [1892] 3 Ch. 88; 61 L. J. Ch. 622 - 284
Grimthorpe, *re*, Beal *v.* Baron Grimthorpe [1905], *Times*, 6th June, and 1st and 8th August - - - 98
Gunning's Executors, Lord Advocate *v.* - - - 30
Gunning's Trustees, Lord Advocate *v.* - - - 88, 154

Haas *v.* Atlas Insurance Co. [1913], 108 L. T. 373 - 38
Hacket, *re*, Hacket *v.* Gardiner, [1907] 1 Ch. 385; 76 L. J. Ch. 249; 96 L. T. 420 - - - - - 108
Hadley, *re*, Johnson *v.* Hadley, [1909] 1 Ch. 20; 78 L. J. Ch. 254; 100 L. T. 54 - - - - - 106
Hamilton's Estate, *re* Trevor B., [1905] 39 Ir. L. T. 272 - 91, 278, 280, 283
"Hand & Spear," *re* The, *ex parte* Ashby's Staines Brewery Co., Limited - - - - - - 152
Harris, *re*, [1852], 7 Ex. 344; 21 L. J. Ex. 92 - - 170
Harris's Trustees *v.* Harris [1904] 41 S. L. R. 357; 11 S. L. T. 726 - - - - - - 107
Hawkins, Attorney-General *v.* - - - - 40
Hay, Attorney-General *v.* - - - - - 56
Hearn, Dawson *v.* - - - - - - 195
Henderson's Trustees, Lord Advocate *v.* - - - 157
Hoare *v.* Osborne [1866], L. R. 1 Eq. 585; 35 L. J. Ch. 345; 14 L. T. 9 - - - - - 187
Hodgson, Sharpe *v.*, *re* Pimm - - - - 108

PAGE

Holbrook, Attorney-General *v.* - - - - 170
Holford, Attorney-General *v.* - - - - 202
Hope, Executors of, Attorney-General *v.* - - - 218
Horne *v.* Coleman [1856], 26 L. J. Ch. 213; 2 Jur. (N. S.) 1127 - - - - - - - 207
Hoskin's Trusts, *re*, [1877], 6 Ch. D. 281; 46 L. J. Ch. 274 - 206
Howe's Settled Estates, *re*, Howe *v.* Kingscote, [1903] 2 Ch. 69; 72 L. J. Ch. 461; 88 L. T. 438 - - - - 108
Howe, De Beers Consolidated Mines *v.* - - - 15
Hudson, *re*, Spencer *v.* Turner, [1911] 1 Ch. 206; 80 L. J. Ch. 129; 103 L. T. 718 - - - - - 23, 227

Jameson, deceased, *re*, Attorney-General *v.* Jameson, [1905] 2 I. R. 218; 38 I. L. T. 117 - - - - 143
Jenkinson, Fitzhardinge *v.*, *re* Fitzhardinge - - - 108
Jervis *v.* Wolferstan [1874], L. R. 18 Eq. 81; 43 L. J. Ch. 809 171
Jewish Colonization Association, Attorney-General *v.* 13, 120, 252
Johnson and Others, Attorney-General *v.* - 12, 13, 15, 119, 253
Johnson, Attorney-General *v.* - - - 26, 240, 298
Johnson *v.* Hadley, *re* Hadley - - - - 106
Jones's Trust, *re*, [1852], 21 L. J. Ch. 566 - - - 205

Kelly, Travers *v.*, *re* King - - - - 105, 136
Kiddell, Sanders *v.* - - - - - - 190
King, *re*, Travers *v.* Kelly, [1904] 1 Ch. 363; 73 L. J. Ch. 210; 90 L. T. 281 - - - - 105, 136
Kingscote, Howe *v.*, *re* Howe's Settled Estates - - 108
Kinloch-Cooke *v.* Public Trustee, *re* Coxwell's Trusts - 108

Laurie, *re*, [1897], 25 S. S. C., 4th series, 636; 35 S. L. R. 496 108
Law Reversionary Interest Society, Solicitor-General *v.* 277, 279, 287
Lawson *v.* Commissioners of Inland Revenue, [1896] 2 I. R. 418 - - - - - - - - 12
Leach *v.* Leach, *re* Smyth - - - - - 12
Learmonth, Nisbett's Trustees *v.* - - - 185, 204
Leconfield, Lord, *re*, Wyndham *v.* Leconfield [1904], 90 L. T. 399 - - - - - - - - 100

PAGE

Lefroy *v.* Egmont, *re* Egmont's Settled Estates - - 108

Lejoindre, Spain *v.*, *re* Leveridge - - - 105, 136

Lethbridge *v.* Attorney-General, [1907] A. C. 19; 76 L. J. K. B. 84; 95 L. J. 842 - - - - - 40, 46

Leveridge, *re*, Spain *v.* Lejoindre, [1901] 2 Ch. 830; 71 L. J. Ch. 23; 85 L. T. 458 - - - - 105, 136

Ley, Foster *v.* - - - - - 170, 203, 208

Littledale, Attorney-General *v.* - - - 276, 296

Locker, Salt *v.*, *re* Parker-Jervis - - - 108, 157

Loder *v.* St. Albans, *re* St. Albans - - - - 108

Lombard, *re*, [1904] 2 I. R. 621 - - - - 28

Londesborough *v.* Somerville [1854], 19 Beav. 295; 23 L. J. Ch. 646 - - - - - - 190

Lord Advocate *v.* Alexander's Trustees [1905], 42 S. L. R. 307; 12 S. L. T. 682 - - - - - 87, 88

Lord Advocate *v.* Bogie, [1894] A. C. 83; 63 L. J. P. C. 85; 70 L. T. 533 - - - - - - 174

Lord Advocate *v.* Freckleton's Judicial Factor [1894], 21 S. S. C., 4th series, 743 - - - - - 191

Lord Advocate *v.* Gordon [1893], 32 S. L. R. 532 - - 262

Lord Advocate *v.* Gunning's Executors [1907], S. S. C. 800; 44 S. L. R. 514 - - - - - - 30

Lord Advocate *v.* Gunning's Trustees [1902], 39 S. L. R. 534; 9 S. L. T. 403 - - - - - - 88, 154

Lord Advocate *v.* Henderson's Trustees [1905], 42 S. L. R. 720; 13 S. L. T. 259 - - - - - 157

Lord Advocate *v.* Maclachlan [1899], 1 S. S. C., 5th series, 917; 36 S. L. R. 727; [1900], W. N. 204 - - 47

Lord Advocate *v.* Macrae [1894], 31 S. L. R. 637 - 191

Lord Advocate *v.* McKersies [1881], 19 S. L. R. 438 241, 307

Lord Advocate *v.* McTaggart Stewart [1906], 13 Sc. L. T. R. 945; 43 Sc. L. R. 465 - - - - - 49, 65

Lord Advocate *v.* Miller's Trustees [1884], 21 Sc. L. R. 709 - 191

Lord Advocate *v.* Moray, [1905] A. C. 531; 93 L. T. 569; 74 L. J. P. C. 122 - - - - - 108

Lord Advocate *v.* Pringle [1878], 5 S. S. C., 4th series, 912; 15 S. L. R. 624; 66 L. J. P. C. 41 - - - 148

PAGE

Lord Advocate *v.* Robertson (or Fleming), [1897] A. C. 145; 76 L. T. 125 - - - - - 39, 244, 300
Lord Advocate *v.* Roberts's Trustees [1858], 10 S. S. C. 2nd series, 1016 (20 Dunlop 449) - - - - 245
Lord Advocate, Sprot's Trustees *v.* - - - - 94
Lord Advocate, Watherston's Trustees *v.* - - 131, 191
Lord Advocate *v.* Wilson [1894], 21 S. S. C., 4th series, 997; 31 S. L. R. 819 - - - - - - 29
Lordan, Attorney-General *v.* - - - 113, 288
Louch *v.* Peters [1834], 1 Mylne & K. 489; 3 L. J. Ch. 167 - 189
Lovelace, *re*, [1859], 4 De G. & J. 340; 28 L. J. Ch. 489 - 253

MacKechnie *v.* Clark, *re* Clark - - - - 14
MacKechnie, *re*, [1898], 6 S. L. T. 242 - - - 107
Maclaclan, Lord Advocate *v.* - - - - - 47
Macrae, Lord Advocate *v.* - - - - - 191
Magan, deceased, *in re*, [1908], 52nd Inland Revenue Report, page 87 - - - - - - 74
Malkin, Attorney-General *v.* - - - - 206
Manchester, *re* Consuelo Duchess of, Duncannon *v.* Manchester, [1912] 1 Ch. 540; 106 L. T. 332; 81 L. J. Ch. 329 - 99
Mander, Attorney-General *v.* - - - - - 249
Mansion, Bryan *v.* - - - - - - 208
Martin, Turner *v.* - - - - - - 171
Martineau, Walker *v.*, *re* Grant - - - - 132
Maryon-Wilson, *re*, Wilson *v.* Maryon-Wilson, [1900] 1 Ch 565; 69 L. J. Ch. 310; 82 L. T. 171 - - - 104, 108, 136
Massam, Thorley *v.*, *re* Thorley - - - - 172
Maxwell, Attorney-General *v.* - - - - 206
McKersies, Lord Advocate *v.* - - - 241, 307
McTaggart Stewart, Lord Advocate *v.* - - - 49, 65
Mead, *in re*, Austin *v.* Mead, 15 Ch. D. 651; 50 L. J. Ch. 30 21
Meadows, Dugdale *v.* - - - - - 245
Menzies, Bartholomew *v.*, *re* Weston - - - - - 22
Metcalfe, Attorney-General *v.* - - - - 202
Mexborough, *re*, Savile *v.* Mexborough [1903], 88 L. T. 331 - 108

PAGE

Miller's Trustees, Lord Advocate *v.* - - - - 191
Miller *v.* Miller, 3 P. Wins. 357 - - - - 22
Milne, Attorney-General *v.* - - - - - 135
Monro, Eyre *v.* - - - - - - 172
Montagu, Attorney-General *v.* - - - - 91
Montefiore, Attorney-General *v.*, (covenant debt) - - 245
Montefiore, Attorney-General *v.*, (limitation of time) - 111, 212, 290
Montgomery, Thomas *v.* - - - - 185, 186
Moore, Cochrane *v.* - - - - - - 31
Moore *v.* Moore, L. R. 18 Eq. 474; 43 L. J. Ch. 617; 30 L. T. 752 - - - - - - 21
Moray, Lord Advocate *v.* - - - - - 108
Morgan *v.* Dyet, *re* Dyet - - - - 105, 136
Morland, Fryer *v.* - - - - - - 239
Murray, Attorney-General *v.* - - - - - 40

Naylor, Williamson *v.* - - - - - 171
New York Breweries Company, Attorney-General *v.* 98, 104, 203, 206
Nisbett's Trustees *v.* Learmonth [1845], 8 Dunlop, Court of Sess. 69 - - - - - - 185, 204
Northumberland *v.* Attorney-General, [1905] A. C. 406; 74 L. J. K. B. 734; 93 L. T. 88 - - 278, 279

Orford, *re*, Cartwright *v.* Duc Del Balzo, [1896] 1 Ch. 257; 65 L. J. Ch. 253; 73 L. T. 681 - - - 102, 108
Osborne, Hoare *v.* - - - - - - 187
Oswald, Advocate-General *v.* - - - - - 191
Owen, Attorney-General *v.* - - - - - 133

Parker-Jervis, *re*, Salt *v.* Locker, [1898] 2 Ch. 643; 67 L. J. Ch. 682; 79 L. T. 403 - - - - 108, 157
Partington, Attorney-General *v.* - - - - 58
Pascoe, Fowkes *v.* - - - - - - 34
Peckham *v.* Taylor, 31 Beav. 254 - - - - 32
Peek and Others, Attorney-General *v.* - - - 9, 125
Penfold *v.* Dixon, *re* Dixon - - - - - 100

PAGE

Pennell *v.* Franklin, *re* White - - - - 172
Penrhyn, Attorney-General *v.* - - - - 53, 54
Peters, Louch *v.* - - - - - - - 189
Peyton, *re*, [1861], 7 H. & N. 265; 31 L. J. Ex. 50; 5 L. T. 313 - - - - 249, 280, 283, 284
Philbrick's Trusts, *re*, [1865], 34 L. J. Ch. 368; 12 L. T. 261 206
Pickard, Attorney-General *v.* - - - - - 175
Pimm, *re*, Sharpe *v.* Hodgson, [1904] 2 Ch. 345; 73 L. J. 627; 91 L. T. 190 - - - - - - - 108
Pinsent *v.* Avery, *re* Avery - - - - - 86
Platt *v.* Routh [1841], 6 M. & W. 756; 10 L. J. Ex. 105 - 174
Poë *v.* Spencer-Cooper, *re* Cooper - - - - 108
Pooley, *re*, [1888], 40 Ch. D. 1; 58 L. J. Ch. 1; 60 L. T. 73 172
Porte *v.* Williams, [1911] 1 Ch. 188; 80 L. J. Ch. 127; 103 L. T. 798 - - - - - - - 227
Priestley, Commissioners of Inland Revenue *v.* - - 61
Pringle, Lord Advocate *v.* - - - - - 148
Public Trustee, Kinlock Cooke *v.*, *re* Coxwell's Trusts - 108

Queen, The, Stern *v.* - - - - - - 15

Repington, *re*, Wodehouse *v.* Scobell, [1904] 1 Ch. 811; 73 L. J. Ch. 533; 90 L. T. 663 - - - - 207
Reversionary Interest Society, *re*, Attorney-General *v.* Walker 126
Rhodes, Bowra *v.* - - - - - 196, 208
Richardson *v.* Commissioners of Inland Revenue, [1909] 2 I. R. 597 - - - - - - - 40
Robertson, Attorney-General *v.* - - - - 282
Robertson (or Fleming), Lord Advocate *v.* - - 39, 244, 300
Roberts's Trustees, Lord Advocate *v.* - - - - 245
Robinson, Attorney-General *v.* - - - - 40
Robinson, Crow *v.* - - - - - - 197
Routh, Platt *v.* - - - - - - 174
Rowley, Barnes *v.* - - - - - - 194
Ruxton, Ford *v.* - - - - - - - 189

PAGE
Salt *v.* Locker, *re* Parker-Jervis - - - 108, 157
Salting, Commissioner of Stamp Duties *v.* - - - 11
Sammon, *re*, [1838], 3 M. & W. 381 - - - - 208
Sanders *v.* Kiddell [1835], 7 Sim. 536; 5 L. J. Ch. 29 - 190
Savile *v.* Mexborough, *re* Mexborough - - - 108
Scobell, Wodehouse *v.*, *re* Repington - - - 207
Scott, *re*, [1901] 1 K. B. 228; 70 L. J. Q. B. 66; 83 L. T. 613 10, 174
Seafield, Fischer *v.* - - - - - - 191
Seccombe, Attorney-General *v.* - - - 29, 65, 119
Sefton, Attorney-General *v.* - - - - - 271
Selborne, Attorney-General *v.* - - - 245, 281
Sharpe *v.* Hodgson, *re* Pimm - - - - 108
Sibthorpe, Attorney-General *v.* - - - - 283
Sitwell, *ex parte*, *in re* Drury Lowe's Marriage Settlement [1888], 21 Q. B. D. 466; 59 L. T. 539 - - - - 281
Skipper *v.* Wade, *re* Turnbull - - - 191, 217
Smith Marriott, Attorney-General *v.* - - - - 121
Smyth, *re*, Leach *v.* Leach, [1898] 1 Ch. 89; 67 L. J. Ch. 10; 77 L. T. 514 - - - - - - 12
Smythe, Attorney-General *v.* - - - - 283
Snellgrove *v.* Baily, 3 Atk. 214 - - - - 22
Solicitor-General *v.* Law Reversionary Interest Society [1873], L. R. 8 Ex. 233; 42 L. J. Ex. 146; 28 L. T. 769 277, 279, 287
Somerville, Londesborough *v.* - - - - 190
Spain *v.* Lejoindre, *re* Leveridge - - - 105, 136
Spencer *v.* Turner, *re* Hudson - - - - 23, 227
Sprot's Trustees *v.* Lord Advocate [1902], 10 S. L. T. (No. 293) 452 - - - - - - 94
St. Albans, *re*, Loder *v.* St. Albans, [1900] 2 Ch. 873; 69 L. J. 863; 49 W. R. 74 - - - - - 108
Stamford, Grey *v.* - - - - - - 284
Standing *v.* Bowring [1885], 31 Ch. D. 282; 55 L. J. Ch. 218; 54 L. T. 191 - - - - - - 34
Staniland *v.* Willott [1752], 3 Mac. & G. 664 - - 22
Stern *v.* The Queen, [1896] 1 Q. B. 211; 65 L. J. Q. B. 240; 73 L. T. 752 - - - - - - 15

PAGE

Steven, Forbes *v.* - - - - - - 11, 169
Stevens, Cooper-Dean *v.*, *re* Dean - - - - 171
Stokes *v.* Ducroz [1890], 38 W. R. 535; 62 L. T. 176 11, 15, 169
Strange, Attorney-General *v.* - - - - 54, 127
Studdert, *in re*, Commissioners of Inland Revenue *v.* Priestley - - - - - - 61
Sweeting *v.* Sweeting [1853], 22 L. J. Ch. 441; 20 L. T. 288; 1 Drew 331 - - - - - 170, 175

Tatham, Dawkins *v.* - - - - - 189
Taylor, Peckham *v.* - - - - - - 32
Thomas *v.* Montgomery [1827], 3 Russ. 502 - - 185, 186
Thompson *v.* Birch [1876], W. N. 177, 278 - - - 251
Thomson *v.* Advocate-General [1845], 12 Cl. & Fin. 1; 13 Sim. 153 - - - - - 173, 220
Thorley, *re*, Thorley *v.* Massam, [1891] 2 Ch. 613; 60 L. J. Ch. 537; 64 L. T. 515 - - - - - 172
Tootal's Trusts, *in re*, [1883], 23 Ch. D. 532 - - - 221
Townsend, *re*, [1901] 2 K. B. 331; 70 L. J. K. B. 764; 84 L. T. 714 - - - - - 47
Travers *v.* Kelly, *re* King - - - - 105, 136
Trewby, Cooper *v.* - - - - - 287, 291
Turnbull, *re*, Skipper *v.* Wade, [1905] 1 Ch. 726; 74 L. J. Ch. 438 - - - - - - 191, 217
Turner, Spencer *v.*, *re* Hudson - - - - 23, 227
Turner, Ward *v.* - - - - - 22
Turner *v.* Martin [1857], 7 De. G. M. & G. 429; 26 L. J. Ch. 216 - - - - - - - 171

Udny *v.* Udny [1869], L. R. 1 Sco. App. 441 - - 221
Upton, Attorney-General *v.* - - - - - 246

Vardill, Birtwhistle *v.*, *re* Doe, deceased - - - 284
Veal *v.* Veal [1859], 27 Beav. 303; 2 L. T. 228 - - 21
Vernon, *re*, [1901] 1 K. B. 297; 70 L. J. K. B. 202; 83 L. T. 535 - - - - - - - 126

PAGE

Wack, Attorney-General *v.* - - - - - 105
Wade, Attorney-General *v.* - - - - 198
Wade, Skipper *v.*, *re* Turnbull - - - 191, 217
Walker, Attorney-General, *v.*, *re* Reversionary Interest Society 126
Walker *v.* Martineau, *re* Grant - - - - 132
Wallace *v.* Attorney-General [1865], L. R. 1 Ch. App. 1; 35 L. J. Ch. 124; 13 L. T. 480 - - - - 251
Wallop's Trusts, *re*, [1864], 33 L. J. Ch. 351; 10 L. T. 174; 1 De G. J. & S. 656 - - - - 20, 246, 253
Ward *v.* Turner [1752], 1 L. C. 983; 2 Ves. Senr. 431 - 22
Watherston's Trustees *v.* Lord Advocate [1901], 3 S. S. C., 5th series, 429; 38 S. L. R. 324; [1902], W. N. 167 131, 191
Weston, *re*, Bartholomew *v.* Menzies, [1902] 1 Ch. 680; 71 L. T. Ch. 343; 86 L. J. 551 - - - - 22
White, *re*, Pennell *v.* Franklin, [1898] 2 Ch. 217; 67 L. J. Ch. 502; 78 L. T. 770 - - - - - 172
Williams, Porte *v.* - - - - - - 227
Williamson *v.* Naylor [1838], 3 Y. & C. 208 - - - 171
Willott, Staniland *v.* - - - - - 22
Wilson, Lord Advocate *v.* - - - - - 29
Wilson *v.* Maryon-Wilson, *re* Maryon-Wilson - 104, 108, 136
Winans *v.* Attorney-General, [1904] A. C. 287; 90 L. T. 721; 73 L. J. K. B. 613 - - - - - 11, 220
Winans *v.* Attorney-General, [1910] A. C. 27; 101 L. T. 754; 79 L. J. K. B. 156 - - - - - 15
Witt, Amiss *v.* - - - - - - 22
Wodehouse *v.* Scobell, *re* Repington - - - - 207
Wolferstan, Jervis *v.* - - - - - 171
Wolverton *v.* Attorney-General, [1898] A. C. 535; 67 L. J. Q. B. 829; 79 L. T. 58 - - - - - 277
Wood, Attorney-General *v.* - - - - 51, 52, 121
Wright *v.* Barnewell [1848], 19 L. J. Ch. 38; 13 Jur. 1041 207
Wyndham *v.* Leconfield, *re* Lord Leconfield - - - 100
Wynter, Bullmore *v.*, *re* Bullmore - - - - 284

# TABLE OF STATUTES.


29 Car. II. c. 3 (Statute of Frauds):

s. 4, pp. 32, 50; s. 7, pp. 32, 50.

20 Geo. III. c. 28, p. 165.

36 Geo. III. c. 52 (Legacy Duty Act, 1796):

s. 6, pp. 185, 202, 222; s. 8, pp. 193, 199, 223; s. 9, pp. 195, 204; s. 10, pp. 194, 225; s. 11, p. 198; s. 12, p. 195; s. 13, pp. 196, 203, 222; s. 14, pp. 204, 215, 297; s. 17, pp. 197, 205; s. 18, p. 174; s. 19, p. 200; s. 20, p. 201; s. 21, pp. 189, 217; s. 22, pp. 186, 226; s. 23, pp. 191, 262; s. 24, p. 207; s. 25, p. 208; s. 26, p. 209; s. 27, p. 209; s. 28, pp. 209, 223; s. 29, p. 209; s. 30, p. 210; s. 32, p. 210; s. 34, p. 211; s. 35, p. 209; s. 37, p. 211; s. 41, p. 210.

39 Geo. III. c. 73, s. 1, p. 216.

48 Geo. III. c. 149, s. 44, p. 209.

55 Geo. III. c. 184 (Stamp Act, 1815):

s. 2, pp. 168, 177; s. 37, p. 101; 3rd Schedule, pp. 177, 213.

5 & 6 Vict. c. 82 (Stamp Duties (Ireland) Act, 1842), s. 38, p. 218.

8 & 9 Vict. c. 16, s. 14, p. 31.

8 & 9 Vict, c. 76 (Revenue Act, 1845), s. 4, pp. 22, 168.

16 & 17 Vict. c. 51 (Succession Duty Act, 1853):

s. 1, pp. 237, 245, 292; s. 2, pp. 237, 242; s. 3, p. 243; s. 4, p. 246; s. 5, p. 247; s. 7, pp. 32, 240; s. 8, pp. 176, 242; s. 10, p. 254; s. 11, pp. 182, 284; s. 12, pp. 247, 282, 299; s. 13, pp. 41, 250; s. 14, p. 276; s. 15, pp. 277, 280; s. 16, p. 279; s. 17, pp. 299, 300; s. 18, pp. 276, 295, 297, 298; s. 20, pp. 243, 248,

282, 285; s. 21, pp. 264, 268, 270; s. 22, p. 269; s. 24, pp. 272, 299; s. 25, p. 249; s. 26, p. 272; s. 27, p. 279; s. 28, p. 269; s. 30, p. 201; s. 32, pp. 262, 266, 268; s. 34, pp. 270, 283; s. 36, p. 266; s. 37, p. 272; s. 38, p. 273; s. 39, p. 273; s. 40, p. 270; s. 41, p. 273; s. 42, pp. 286, 287; s. 43, p. 292; s. 44, pp. 286, 291; s. 45, p. 291; s. 49, p. 291; s. 50, p. 291; s. 51, p. 292; s. 52, p. 292; s. 53, pp. 208, 292.

30 & 31 Vict. c. 144, s. 3, p. 31.

31 & 32 Vict. c. 124, s. 9, p. 210.

43 Vict. c. 14 (Customs and Inland Revenue Act, 1880):

s. 11, pp. 192, 211, 273; s. 12, p. 212; s. 13, p. 214.

44 Vict. c. 12 (Customs and Inland Revenue Act, 1881):

s. 38, p. 21; s. 42, p. 214; s. 43, pp. 192, 193.

45 & 46 Vict. c. 39 (Conveyancing Act, 1882), s. 3, p. 104.

46 & 47 Vict. c. 30, s. 7 (*b*), p. 14.

47 & 48 Vict. c. 62, s. 11, p. 38.

51 & 52 Vict. c. 8 (Customs and Inland Revenue Act, 1888):

s. 21, pp. 166, 254, 263; s. 22, pp. 270, 271.

52 & 53 Vict. c. 7 (Customs and Inland Revenue Act, 1889):

s. 10, pp. 273, 291, 296; s. 11, p. 21; s. 12, p. 289; s. 13, p. 290; s. 14, pp. 212, 289, 290; s. 15, p. 289.

52 & 53 Vict. c. 42 (Revenue Act, 1889):

s. 18, pp. 14, 15; s. 19, p. 38.

54 & 55 Vict. c. 39 (Stamp Act, 1891), p. 31.

56 & 57 Vict. c. 53 (Trustee Act, 1893), s. 42, p. 210.

57 & 58 Vict. c. 30 (Finance Act, 1894):

s. 1, pp. 6, 165, 182, 254, 300; s. 2, pp. 6, 10, 12, 16, 21, 31, 33, 38, 47, 49, 119; s. 3, pp. 28, 42, 48, 120; s. 4, pp. 71, 72; s. 5, pp. 17, 51, 55, 65, 121, 129; s. 6, pp. 92, 93, 97, 100, 101, 153; s. 7, pp. 8, 47, 62, 81, 83, 88, 141, 153, 157; s. 8. pp. 94, 97,

101, 102, 104, 105, 110, 112, 122, 156; s. 9, pp. 99, 106, 107, 227; s. 10, pp. 116, 156; s. 11, pp. 113, 114, 115, 162; s. 12, pp. 85, 115, 147, 160; s. 13, pp. 115, 193, 211; s. 14, p. 108; s. 15, pp. 9, 45, 46, 73, 123; s. 16, pp. 35, 69, 71, 74, 148, 219, 300; s. 18, pp. 236, 262, 264; s. 20, pp. 89, 106, 115, 149; s. 21, pp. 54, 57, 125, 127, 130, 279; s. 22, pp. 6, 9, 16, 17, 50, 63, 98, 130; Schedule 1, pp. 165, 182, 254.

59 & 60 Vict. c. 28 (Finance Act, 1896):

s. 14, p. 52; s. 15, p. 53; s. 16, p. 94; s. 18, pp. 92, 93, 111, 193; s. 19, pp. 104, 136; s. 20, pp. 66, 73, 100; s. 21, p. 127.

61 & 62 Vict. c. 10 (Finance Act, 1898):

s. 13, pp. 17, 55, 129, 300; s. 14, pp. 131, 134.

63 Vict. c. 7 (Finance Act, 1900):

s. 11, pp. 31, 64; s. 12, pp. 71, 73, 126; s. 14, p. 123; s. 18, p. 71.

3 Ed. VII. c. 46 (Revenue Act, 1903), s. 14, p. 69.

7 Ed. VII. c. 13 (Finance Act, 1907):

s. 12, p. 126; s. 13, pp. 111, 193; s. 14, p. 114; s. 15, p. 127 s. 16, pp. 71, 73.

8 Ed. VII. c. 69 (Companies (Consolidation) Act, 1908), p. 31.

10 Ed. VII. c. 8 (Finance (1909-10) Act, 1910):

s. 1, pp. 311, 312, 313; s. 2, pp. 311, 312; s. 3, p. 313; s. 5, pp. 313, 314; s. 7, p. 314; s. 8, p. 314; s. 11, p. 314; s. 25, p. 312; s. 26, p. 311; s. 27, p. 311; s. 33, p. 314; s. 34, p. 314; s. 41, p. 312; s. 54, pp. 67, 129; s. 55, p. 61; s. 56, pp. 93, 293; s. 58, pp. 165, 177 *et seq.*, 219, 254, 256, 258, 260, 301; s. 59, pp. 23, 64, 119; s. 60, pp. 82, 87, 116, 142, 264; s. 61, pp. 70, 92, 155, 265; s. 62, pp. 91, 313; s. 63, pp. 66, 73, 100, 124; s. 64, pp. 126, 255; s. 74, p. 131; s. 96, pp. 124, 205, 297; 6th Schedule, p. 205.

1 Geo. V. c. 2 (Revenue Act, 1911), s. 2, p. 311.

1 & 2 Geo. V. c. 48 (Finance Act, 1911), s. 18, pp. 87, 153.

2 & 3 Geo. V. c. 8 (Finance Act, 1912), s. 9, pp. 92, 265, 272, 299.

# INTRODUCTION.

THE duties payable in respect of the estates of persons dying at the present time are—

1. Estate Duty, including Settlement Estate Duty.
2. Legacy Duty.
3. Succession Duty.
4. Increment Value Duty.

Estate Duty is payable, at rates graduated according to the value of the estate, on all property passing on death without regard to the persons who benefit or their relationship to the deceased.

Settlement Estate Duty is a further Estate Duty at a fixed rate of £2 per cent. which is payable on settled property and is a set-off against the freedom from a second Estate Duty which settled property has when Estate Duty has once been paid.

Legacy Duty and Succession Duty are taxes on the actual benefit coming to the legatee or successor. The rates vary with the relationship

of the legatee or successor to the testator or predecessor; and (except as to the £1 per cent. rates), do not depend like Estate Duty on the amount or value of the property passing. Legacy Duty is only payable on personal property (not including leaseholds) under wills or intestacies and on donations *mortis causa*; while Succession Duty is payable on all gratuitous acquisitions on death except where Legacy Duty is chargeable.

Increment Value Duty is payable at the rate of £20 per cent. on the increment (if any) which has accrued to the site value of land since the 30th April, 1909.

The duties treated of in this work are those payable on a death occurring at the present time, *i.e.* after the 7th August, 1912—the date of passing The Finance Act, 1912; and where the term "deceased" is used it may be assumed, unless otherwise stated, to refer to a person who has died after that date.

In referring to the Finance Acts in the footnotes, the abbreviation "F. A." will be used, and The Finance (1909-10) Act, 1910, will be referred to as "The Finance Act, 1910," or "F. A. 1910."

# PART I.

## ESTATE DUTY.

THIS duty was imposed in its present form by The Finance Act, 1894, and is payable in the case of all persons dying after 1st August, 1894. It practically superseded Probate Duty and Account Stamp Duty and is chargeable on all property passing on death, without regard to the relationship of the beneficiaries to the deceased owner.

The Act of 1894 was amended by the subsequent Finance Acts of 1896, 1898, 1900, 1907, 1910, 1911, and 1912, and by The Revenue Act, 1903.

The rates of duty depend on the amount or value of the property passing, and run from 1 per cent. for an estate exceeding £100 up to 15 per cent. for an estate of over £1,000,000.[1]

The sweeping provision that the duty is payable on all property "passing" upon the death of the deceased[2] brings within the area of taxation not only property which belonged to him absolutely, including his real estate (which formerly did not bear the analogous Probate Duty), but also property comprised in any instrument not made by him, or property in which he had only a limited interest (as, for instance, a life interest),

[1] F.A. 1910, s. 54. [2] F.A. 1894, s. 1.

and even property in which he had no interest at all. It is sufficient to attract the duty that the property should "pass," or, by virtue of the Acts, should be "deemed to pass,"[1] on his death.

At the same time that Estate Duty was introduced Succession Duty was made payable on the principal value of all real and leasehold property to which the successor on a death, after the passing of The Finance Act, 1894, becomes absolutely entitled.[2] Formerly that duty was in almost all cases calculated on the value of an annuity equal to the annual value of the property for the life of the successor. This method of calculation now only obtains where the successor becomes entitled to less than an absolute interest.

Estate Duty may in many respects be considered as substituted for the old Probate Duty, although it has a much wider scope. The Finance Act, 1894, however, introduced an entirely new duty chargeable in respect of settled property. It is called Settlement Estate Duty,[3] and is a further Estate Duty chargeable on settled property at a fixed rate of £2 per cent.[4] But where this duty and Estate Duty have once been paid, Estate Duty is not again payable until the death of a person who is competent to dispose.[5]

For determining the *rate* of Estate Duty, a new principle was introduced called "Aggregation."[6] Thus where several distinct estates pass on a person's death, as, for instance, his free estate under his will and settled property under his marriage settlement, in order to determine the rate of duty in respect of any particular

[1] F. A. 1894, s. 2.
[2] F.A. 1894, s. 18.
[3] F. A. 1894, s. 5 (1).
[4] F. A. 1910, s. 54.
F. A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13.
[6] F. A. 1894, s. 4, as amended by F. A. 1900, Sections 12 & 18, and F. A. 1907, s. 16.

estate, it is necessary to aggregate it with or add it to the other estates passing. The appropriate rate of duty payable for the aggregated total will then be the rate of duty payable in respect of the particular property under consideration. There are, however, exceptions to this principle which will be explained in due course.

Estate Duty will be considered under the following heads :—

1. The Property upon which it is Payable.
2. The Rates and Amount of Duty Payable.
3. The Persons Accountable.
4. Exemptions.

# CHAPTER I.

## THE PROPERTY UPON WHICH ESTATE DUTY IS PAYABLE.

THE duty is imposed on all property, real or personal, settled or not settled, which passes on the death of the deceased.[1] The phrase "property passing" includes, not only property which actually passes but is made to cover certain other property which might not have come within the meaning of the term "passing," but which for Estate Duty purposes is to be "deemed to pass."[2] It also includes, besides property passing immediately on the death, property passing after an interval, either certainly or contingently and either originally or by way of substitutive limitation, and the expression "on the death," includes "at a period ascertainable only by reference to the death."[3] So long, therefore, as the property "passes" within the meaning indicated above it is immaterial whether it has been settled or not, whether it belonged to the deceased absolutely or not, how or to whom it is given, whether the deceased had an interest in it or not, or what its nature is. If it "passes" or is "deemed to pass," on the death of the deceased, it is liable to Estate Duty unless expressly exempted.

The duty is payable on the principal value at the date of the death: that is, the market value at that time.[4]

[1] F. A. 1894, s. 1.
[2] F. A. 1894, s. 2.
[3] F. A. 1894, s. 22 (1) (*l*).
[4] F. A. 1894, s. 7 (5).

Property passing or deemed to pass on death includes—

(A) The deceased's free estate.

(B) Property situate out of the United Kingdom (subject to the qualifications hereafter mentioned).

(C) Property of which the deceased was competent to dispose.

(D) Donations *mortis causa*, or death-bed gifts.

(E) Gifts *inter vivos*.

(F) Property owned jointly or purchased or invested in joint names.

(G) Policies of assurance, and annuities or other interests purchased or provided by the deceased.

(H) Property in which the deceased or any other person had an interest ceasing on the death of the deceased to the extent to which a benefit accrues or arises by his death.

(I) Property comprised in a settlement.

### A.—Deceased's Free Estate.

Estate Duty is payable on the deceased's free estate: that is, just the ordinary forms of real and personal property,[1] passing under his will[2] or intestacy, which a man owns and can do as he likes with.

As the expressions "real" estate or property and "personal" estate or property will frequently recur in this book, it will be convenient to state that, for Estate Duty purposes, by "real" estate or property is meant all lands and houses which are held on freehold or copyhold tenure. It includes freehold and copyhold property, tithe rent charges, freehold ground rents,

[1] F. A. 1894, s. 22 (1) (*f*). [2] F. A. 1894, s. 22 (1) (*b*).

advowsons, lands held for the life of another person and on certain other exceptional tenures such as Borough, English, and Gavelkind; also certain stocks and shares of infrequent occurrence, which have been constituted real property by Act of Parliament such as (formerly) a King's share in the New River Company.

By "personal" estate or property is meant all other kinds of property not comprised in the term "real" estate or property. It includes leasehold property or houses and lands held for a term of years, stocks, shares, money, furniture, policies of assurance, ships, shares in a business, goodwill, and a right of next presentation to a Church living.

Besides real and personal property actually in his possession, the deceased's estate may include an interest in expectancy, *i.e.* property to which he was entitled in reversion. For instance: A. by will gives a sum of £1000 to B. for life and on his death to C. Here C. is said to have a reversion in the £1000 expectant on the death of B., and if he dies before B., the fund, subject to B.'s life interest, forms part of C.'s estate and is liable to Estate Duty accordingly. But the duty may be paid either at C.'s death or on the death of B. when it falls into possession.[1] If the duty is paid at C.'s death its value as a reversion should be accounted for. If, however, it is decided to postpone payment until B.'s death, when the reversion falls in, its value must still be added to or aggregated with the rest of C.'s estate in order to determine the correct rate of duty on the latter, and when the fund falls into possession by the death of B., duty has to be paid on its value at that date, the rate being ascertained by aggregation of such value with the value (at C.'s death) of the rest of his estate.[2] (As to treating the rest of the estate if it does not exceed £1000 as an estate by itself without

[1] F. A. 1894, s. 7 (6). [2] *Re* Colonel Eyre, deceased, [1907] 1 K. B. 331.

regard to the reversion, see page 76). The term "interest in expectancy" does not include a reversion expectant on the determination of a lease[1] for a term of years, nor a policy on the life of another person. So where a testator dies possessed of property subject to a lease for a term of years or, in other words, a freehold ground rent, the accountable parties cannot defer payment of Estate Duty until the lease falls in but must bring into account the market value of the property. Similarly, if he owns a policy on the life of another person who survives him, his executors must account for the saleable value of the policy as part of the testator's estate.

Where the deceased did not make a will and leaves no next-of-kin or heir-at-law his real and personal property, falling to the Crown in default, are still liable to Estate Duty.

An advowson or the perpetual right to present an incumbent to a living of the Church of England on any vacancy occurring or a right to the next presentation is not liable to Estate Duty unless and until sold.[2] The moment the sale takes place Estate Duty must be accounted for on the proceeds of sale at the appropriate rate obtained by aggregation with the other property passing on the deceased's death.

Under Section 33 of The Wills Act, 1837, a gift by will by a person to his child or other issue is prevented from lapsing should the beneficiary die before the testator leaving issue living at the death of the testator, and such gift is to take effect as if such child or other issue had died immediately after the testator.

[1] F. A. 1894, s. 22 (1) (*j*).

[2] F. A. 1894, s. 15 (4), but see Attorney-General *v.* Peek and Others, [1912] 2 K. B. 192, in which it was decided that the Act failed to provide machinery for charging Estate Duty where advowsons were sold and that therefore no Estate Duty was payable. This decision was upheld by the Court of Appeal, 17th April, 1913, but there may be a further appeal.

The property so given forms part of the deceased beneficiary's estate and is liable to Estate Duty accordingly.[1] The accruer is apparently not to be regarded as liable to increase the rate of duty on the rest of the estate, as at the moment of death the deceased child had no more than a *spes successionis* which obviously had no value. And if the rest of the estate did not exceed £15,000, and no other property passed, Legacy Duty and Succession Duty at £1 per cent. would not be payable either on the rest of the estate or on the accruer even if together they exceeded £15,000.

B.—Property Situate Out of the United Kingdom.

This property was not liable to Probate Duty but is made liable to Estate Duty if under the law in force before the passing of The Finance Act, 1894, it would have been liable to Legacy Duty or Succession Duty,[2] (see pages 173 and 250 as to the incidence of such duties).

Property situate outside the United Kingdom is divided into *moveable* and *immoveable*. The latter term includes lands and houses and all estates and interests therein, including leasehold property. The former term includes all other property, whether consisting of tangible objects such as furniture, stock-in-trade, or farming stock having a local situation or of intangible property such as debts, stocks, or shares.

Roughly speaking, the distinction corresponds to that between real and personal property, the main difference being that whereas leaseholds are included in the description of personal property they are not considered to be moveable property and so are included in the class of immoveables.

Absolute Ownership.—As regards property of which the deceased was absolute owner, the liability to Estate Duty depends on the domicil of the deceased (as to domicil,

[1] *Re* John Scott, deceased, [1901] 1 K. B. 228. [2] F. A. 1894, s. 2 (2).

see page 220). Unless it is otherwise claimed the domicil of a deceased person is, for the purpose of Estate Duty, assumed to have been in the United Kingdom. And where a foreign or Colonial domicil is claimed, unless the facts of the case are sufficient to establish it, a statement is in general necessary showing the deceased's domicil of origin, *i.e.* the domicil of his parents at his birth, and giving a short account of his life history up to the date of his death with the view of showing where he intended to make his permanent home. If the domicil claimed is different from the domicil of origin, evidence should be given to show that the deceased had in fact abandoned his domicil of origin and definitely assumed the domicil claimed for him.[1]

The liability to Estate Duty of foreign or Colonial property of which the deceased was absolute owner may be broadly summarised in the statement that such property is not liable to Estate Duty unless the deceased's domicil were in the United Kingdom, in which case Estate Duty is payable on his foreign and Colonial *moveable* property.

Both moveable and immoveable property in the United Kingdom are liable to Estate Duty, whatever may be the domicil of the deceased.[2]

Where the domicil of the deceased was outside the United Kingdom neither his moveable nor his immoveable property so situate is liable to Estate Duty, but Estate Duty is payable in respect of—

(1) Immoveable property outside the United Kingdom forming part of the assets of an English partnership.[3] Such property is by law treated as personal property and devolves as an English asset.

[1] Winans *v.* Attorney-General, [1904] A. C. 287. [2] F. A. 1894, s. 1.

[3] Stokes *v.* Ducroz, 62 L. T. 176; Forbes *v.* Steven, L. R. 10 Eq. 178; and see Commissioners of Stamp Duties *v.* Salting, [1907] A. C. 449.

(2) Where immoveable property outside the United Kingdom was at the deceased's death subject to a trust for sale under a British trust it devolves as English personal property on his death and is accordingly liable as such to Estate Duty even though it may not have been sold at his death.[1] On the other hand, if A. domiciled abroad appoints executors resident abroad and bequeaths moveable assets in England to B., also domiciled abroad, and B. dies before they have been realised, Estate Duty would not be payable in B.'s estate as, *qua* his estate, the assets though still in England have become foreign.

(3) Mortgages on immoveable property outside the United Kingdom also devolve as personal property and are liable to Estate Duty, but only where the deceased was domiciled in this country.[2]

Settled.—As regards *settled* foreign or Colonial property, the liability to Estate Duty is somewhat different and does not depend on the domicil of the deceased.

If at the death of any beneficiary it is found that the property is locally situate in this country, *e.g.* invested in British securities, Estate Duty would be leviable because the property is situate in this country and passes on a death.[3] For example: A. by will gives immoveable property situate abroad to English trustees resident in this country upon trust to sell and the

[1] *Re* Smyth, [1898] 1 Ch. 89, and see Attorney-General *v.* Johnson and Others, [1907] 2 K. B. 885.

[2] F. A. 1894, s. 2 (2), and Lawson *v.* Commissioners of Inland Revenue, [1896] 2 I. R. 418.

[3] F. A. 1894, s. 1, and see Attorney-General *v.* Campbell, L. R. 5 H. L. 524, and Attorney-General *v.* Felce, 10 T. L. R. 337.

proceeds to be held upon trust for his wife for life and on her death to others; and he empowers his trustees to invest the proceeds in British securities. On A.'s death, whether his domicil is situate in this country or not, no Estate Duty is, as has been explained, payable. But if at the death of B. it is found that the proceeds of sale of such immoveable property are invested in British securities, Estate Duty would be leviable in this country.[1] The result would be the same even if the property had not been sold, if on the death of B. it were vested in trustees resident in the United Kingdom under an English settlement (see *infra*).

If on any death the property is situated outside the United Kingdom, the test of liability to Estate Duty depends upon whether under the law in force before the passing of The Finance Act, 1894, the property would have been liable to Legacy Duty or Succession Duty. If it is vested in trustees here under an English settlement Succession Duty would have been payable and therefore Estate Duty is chargeable.[2] For example: A. by a deed made in English form gives moveable property situate abroad to English trustees resident in the United Kingdom upon trust for himself for life and on his death to persons resident abroad. On his death Estate Duty is payable in respect of the property subject to the trust, whether it is actually situate in this country or not; and this is so notwithstanding that A.'s domicil was foreign. The reason is that in order to administer the property and determine all questions relating to it, recourse would have to be had to the English tribunals.

[1] Attorney-General *v.* Johnson and Others, [1907] 2 K. B. 885.

[2] F. A. 1894, s. 2 (2), and *in re* Cigala's Settlement Funds, 7 Ch. D. 351; Attorney-General *v.* Jewish Colonization Association, [1901] 1 K. B. 123.

In general, in order to ascertain the liability to duty of foreign property comprised in a settlement, or foreign property passing under a will which by reason of the testator's domicil being foreign was not liable on his death, it is necessary to determine the following questions:—

(1) Whether in fact at the date of the death of the deceased person the property has become situate in this country either by re-investment or by the sale of immoveable property and investment in British securities.

(2) Whether the property is vested in trustees resident in the United Kingdom under a British trust.

If the answer to either of these questions is in the affirmative, Estate Duty is leviable.

The incidence of Estate Duty is somewhat wider than that of Succession Duty, for Estate Duty is payable on all property passing which is actually situate in this country at the death. But in the case of Succession Duty mere situation is not sufficient. Succession Duty is not payable on property in this country vested in foreign trustees under a foreign settlement.

It is somewhat difficult to ascertain exactly whether certain property is to be considered as situate in this country or not. The following are for the purposes of duty considered to be so situated:—

(1) Inscribed stock of a Colony which is transferable in the books of the Bank of England or elsewhere in the United Kingdom.

(2) Stocks of a Colonial company registered in a register in the United Kingdom.[1]

[1] *Re* Clark; McKechnie *v.* Clark, [1904] 1 Ch. 294; 46 & 47 Vict. c. 30, s. 7 (*b*), and 52 & 53 Vict. c. 42, s. 18.

(3) Stocks and shares of a British company registered and having its head office in this country but carrying on business abroad.[1]

But stocks and shares registered in the Colonial Register and belonging to a person domiciled in a British Possession would be considered assets outside the United Kingdom and not liable to Estate Duty.[2]

(4) Foreign bonds to bearer actually in the United Kingdom at the death, the property in which can be fully transferred without any act done outside the jurisdiction of this country.[3]

(5) American rail and other certificates actually situate here at the death, which by reason of a signed transfer in blank endorsed thereon are marketable here and pass by delivery.[4]

(6) Foreign property, moveable or immoveable, of a British firm carrying on business abroad.[5]

(7) Foreign or Colonial realty subject to a trust for sale, vested in English trustees under an English settlement.[6]

(8) Policies under seal of a company whose head office is situate out of the United Kingdom when the policy is actually situate in the United Kingdom at the death of the deceased, even though the deceased died

[1] As to where a company "resides," see De Beers Consolidated Mines *v.* Howe, [1906] A. C. 455.

[2] 52 & 53 Vict. c. 42, s. 18.

[3] Winans *v.* Attorney-General, [1910] A. C. 27.

[4] Stern and Others *v.* the Queen, [1896] 1 Q. B. 211.

[5] Stokes *v.* Ducroz, 62 L. T. 176.

[6] Attorney-General *v.* Johnson and Others, [1907] 2 K. B. 885.

domiciled abroad. This follows the general rule that a specialty debt is situate where the specialty is found at death. The contrary would be the case if the policy were under hand only.

For Death Duty purposes the United Kingdom includes England and Wales, Scotland, Ireland, and the other adjacent islands, but not the Channel Islands nor the Isle of Man.

The moveable property in this country at a foreign embassy of a foreign sovereign, foreign ambassador or other agent, though actually situate here, is considered to be constructively situate abroad (unless the deceased died domiciled here) and is not therefore liable to Estate Duty on his death. Subject as above, all property in this country, whether owned by a foreign sovereign or his ambassador, or by any other member of his court, is chargeable with Estate Duty in the event of his death.

### C.—Property of which the Deceased was Competent to Dispose.

This class includes property also discussed under heading "A," and under "B," except so far as settled property was referred to.[1]

A person is said to be competent to dispose when he has such an estate or interest in property as would, if he were under no disability, enable him to dispose of it as he thought fit.[2] It is immaterial that the deceased by reason of some disability (as, for instance, infancy, lunacy, or coverture) was not for the time being legally able to dispose of the property. If he would have been competent to dispose had he not been subject to the disability, Estate Duty is payable.

[1] F. A. 1894, s. 2 (1) (*a*).

[2] F. A. 1894, s. 22 (2) (*a*).

A person under a disability of the kind referred to, where it prevents him for the time being from dealing with property as he wishes, is said to be not "*sui juris.*"

An exception must be made from the broad statement as to liability made above where the person who is competent to dispose is not *sui juris* and the property is settled. For where the property is comprised in a settlement, *i.e.* limited to persons by way of succession, and Estate Duty has already been paid on it since the date of the settlement, duty would not be again payable on the death of the deceased notwithstanding that he was competent to dispose if (*a*) he were not *sui juris* at some time while so competent, and (*b*) if subsequent limitations under the settlement take effect on his death.[1] This provision prevents hardship in certain cases where, for instance, the deceased was a minor and, although he had an absolute power of disposition, was unable to exercise it because he was not *sui juris.*

Included in this class are the following:—

(1) Entailed property.[2]

(2) Property over which the deceased had a general power of appointment.[3]

(3) Money which the deceased had a general power to charge on land.[4]

(4) Property of a married woman.

The deceased's share of property under a joint tenancy also constitutes property of which he was competent to dispose, but joint property is separately considered under heading "F."

[1] F. A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13.
[2] F. A. 1894, s. 22 (2) (*a*). [3] *Ibid.* [4] F. A. 1894, s. 22 (2) (*c*).

A person is also deemed competent to dispose if during his lifetime he makes a settlement on other persons but reserves power to revoke the trusts.

1. Entailed property, or real estate of which the deceased was tenant in tail in possession, is liable to Estate Duty on his death. For example: real estate is given to A. for life, and on his death to B. his son in tail; on A.'s death B. succeeds as tenant in tail, and if he dies without having disentailed the property, it would descend to his eldest son, and would not pass under his will. B. is therefore said to be tenant in tail and he is competent to dispose of the property because he can, if he chooses, disentail: that is, bar the entail, and so vest the property in himself absolutely. If, however, he wishes to bar the entail during the life of A., who is technically described as the "protector of the settlement," he must obtain A.'s consent, otherwise he would only create what is termed a "base fee": that is, the property vests in him absolutely (subject, of course, to the life interest) so long as issue, capable of taking under the entail, exists. In default of such issue it would pass to the persons who were ultimately entitled under the terms of the original settlement. Notwithstanding this check on a tenant in tail making the property his own, if he has not disentailed it it would be liable to pay Estate Duty on his death. Of course, if he had disentailed the property and had not disposed of it during his life, it would form part of his free real estate and be taxable with Estate Duty accordingly.

As pointed out above, however, if Estate Duty had already been paid on the property since the date of the settlement (as, for instance, on the death of A.), it would not be again payable on the subsequent death

of B., notwithstanding that he was competent to dispose, if he were not and had not been, while so competent, *sui juris*.[1]

If a person who is entitled to an estate tail dies before he gets the estate in possession and if subsequent limitations under the settlement exist, Estate Duty is not payable on his death.[2] For instance, if in the above case B. dies during A.'s life and the settlement contains further limitations disposing of the property on B.'s death, Estate Duty would not be payable on B.'s death because his interest in the property has failed before it became an interest in possession.

2. Property over which the deceased had a general power of appointment is defined as property over which he had such a power or authority that he can dispose of it as he thinks fit whether by deed or will.[3] For example: A. by will gives B. £1000 for his life and on his death directs it to go in such manner as B. by will shall appoint; and in default of B. exercising the power, to C. absolutely. B. is said to have a general power of appointment over the £1000 because he can give it by will to whomsoever he pleases and it therefore is property of which he is competent to dispose and so is liable to pay Estate Duty on B.'s death. This liability does not depend upon B. exercising the power, for if for any reason he does not choose or omits to exercise it and the property passes to C. it nevertheless is liable to Estate Duty on B.'s death.

A similar rule, exempting the property from Estate Duty on the death of the deceased, however, prevails as to property of this description where it is comprised in a settlement under which Estate Duty has been

[1] F. A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13.
[2] F. A. 1894, s. 5 (3).
[3] F. A. 1894, s. 22 (2) (*a*).

once paid and under which subsequent limitations take effect on the deceased's death and he was not *sui juris* while competent to dispose.[1]

If the property over which the deceased had a general power of appointment consisted of moveable property situate out of the United Kingdom it would not be liable to Estate Duty unless vested in a British trustee resident in this country,[2] or unless the domicil of the deceased, if he exercised the power, were situate in the United Kingdom.

Where the power of disposal is exerciseable in a fiduciary capacity, or exerciseable as a tenant for life under the Settled Land Acts or as mortgagee, the property is not liable to Estate Duty on the death of a person who merely has such a power.

3. Money which the deceased had a general power to charge on property is liable to Estate Duty.[3] Thus A., who dies after The Finance Act, 1894, gives a house to his wife for life with power by her will to charge on it a sum of £200, and, subject thereto, he gives the house to his son. On the widow's death Estate Duty is leviable in respect of the £200 as forming property of which she was competent to dispose, and this is so whether she exercises the power or not.

4. A married woman is deemed competent to dispose of all her property whether it was given to her for her separate use or not, and whether she was restrained from anticipating it or not; and this is so notwithstanding that owing to the marriage having taken place before the passing of the Married Women's Property Acts the husband may have rights over his

[1] F. A. 1894, s. 5 (2), as amended.

[2] F. A. 1894, s. 2 (2); *re* Wallop's Trusts, 33 L. J. Ch. 351; and *in re* Cigala's Settlement, 7 Ch. D. 351.

[3] F. A. 1894, s. 22 (2) (*c*).

wife's estate. In cases of this kind she in fact has such an interest in the property as would, if she were *sui juris* (that is, not under coverture), enable her to dispose of it as she thought fit.[1] If, however, the deceased had been married before the passing of the said Acts and her husband had acquired an absolute interest in her personal property not belonging to her for her separate use, Estate Duty would not apparently be payable.

## D.—Donationes Mortis Causa.

Frequently a person when on his death-bed makes a gift of some article or sum of money to a friend or relation which is only to take effect on the donor's death, there being an express condition that if he recovers he shall resume his property in such gift. Such a disposition is called "a *donatio mortis causa*" and is liable to Estate Duty on the death of the donor.[2]

It should be noted that not every subject of property can be given as a *donatio mortis causa*. In the first place, neither real nor leasehold property can, nor can stocks and shares without a transfer deed.[3] The following have, however, been held capable of being so given: viz., furniture and other articles the property in which can be transferred by delivery (*i.e.* merely handing them over to the donee), promissory notes,[4] bills of exchange,[5] and cheques of a third person,[6] and of the donor if

[1] F. A. 1894, s. 22 (2) (*a*) & (*b*).

[2] F. A. 1894, s. 2 (1) (*c*), incorporating Customs and Inland Revenue Act, 1881, s. 38, as amended by Customs and Inland Revenue Act, 1889, s. 11.

[3] Moore *v.* Moore, L. R. 18 Eq. 474. [4] Veal *v.* Veal, 27 Beav. 303.

[5] *In re* Mead; Austin *v.* Mead, 15 Ch. D. 651.

[6] Clements *v.* Cheeseman, 27 Ch. D. 631.

cashed in his lifetime,[1] banknotes,[2] bonds,[3] assurance policies,[4] bank deposit receipts,[5] money in the Post Office Savings Bank by delivery of the pass book.[6] There are three requisites for a valid *donatio mortis causa:* viz.—

(1) The gift must be made in contemplation of the expected death of the donor.[7]

(2) There must be an actual or constructive delivery of the gift in the donor's lifetime. By a constructive delivery is meant the handing over of some thing or symbol which, though not the gift itself, enables the donee to obtain possession of the gift.[8]

(3) It must be conditional, so that it only takes full effect on the death of the donor from the illness then upon him. If he recovers the gift is defeated. This condition may be expressly stated or implied from the circumstances of the case.[9]

Small donations of this description not amounting in all to more than £20 would be disregarded for Estate Duty purposes; but those above £20 are apparently liable though they do not exceed £100.

Legacy Duty in connection with the donor's death is chargeable in respect of death-bed gifts,[10] and they are liable to satisfy his debts in case of a deficiency of the donor's other assets.

[1] Bouts *v.* Ellis, 4 De G. M. & G. 249.
[2] Miller *v.* Miller, 3 P. Wms. 357.
[3] Snellgrove *v.* Bailey, 3 Atk. 214.
[4] Amiss *v.* Witt, 33 Beav. 619.
[5] Cassidy *v.* Belfast Banking Co., 22 L. R. Ir. 68.
[6] *In re* Weston; Bartholomew *v.* Menzies, [1902] 1 Ch. 680.
[7] Duffield *v.* Elwes, 1 Bligh N. S. 497.
[8] Ward *v.* Turner, 1 L. C. 983.
[9] Staniland *v.* Willott, 3 Mac. & G. 664.
[10] 8 & 9 Vict. c. 76, s. 4.

The Estate Duty on gifts of this kind is not a testamentary expense. It is a charge on the subject-matter of the gift, and if paid by the executor can be recovered by him from the donee.[1]

## E.—Gifts Inter Vivos.

It often happens that a person makes a gift in his lifetime of part of his property, usually to his wife, children, or other relations. Such a disposition is called a *gift inter vivos*, and whether it becomes liable to Estate Duty or not on the donor's death depends on certain considerations.

Gifts Within Three Years.—If the gift is made within three years of the donor's death, Estate Duty is payable.[2] The following exceptions are, however, made:—

(*a*) Immediate gifts made in consideration of marriage.[3] For instance A., on the occasion of his daughter's marriage, settles £5000 upon her and dies within three years. No Estate Duty would be payable on his death.

(*b*) Immediate gifts for public or charitable purposes made more than a year before death.[4] Thus A., in the second year before his death, gives £1000 to a hospital. No Estate Duty would be payable on his death. But all such gifts made within a year of death would be liable to duty.

(*c*) Immediate gifts which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the

[1] *Re* Hudson; Spencer *v.* Turner, [1911] 1 Ch. 206. [2] F. A. 1910, s. 59.
[3] F. A. 1910, s. 59 (2). [4] F. A. 1910, s. 59 (1).

deceased and to have been reasonable, having regard to the amount of his income or to the circumstances.[1] Thus A., a well-to-do man, makes allowances of £250 per annum to each of his children. On his death no claim for Estate Duty would arise in respect of the payments made within three years of his death. Similarly as to other annual payments, such as pensions to old servants, subscriptions which the deceased had been in the habit of making and which are reasonable having regard to the circumstances. The proportion of such annual payments to the date of death is apparently not a permissible deduction in the Inland Revenue affidavit.[2]

(*d*) Immediate gifts which in the case of any donee do not exceed in the aggregate £100 in value or amount.[3] This prevents Estate Duty from being chargeable on small gifts such as birthday gifts, however numerous, so long as in the case of any one donee they do not amount to £100.

Gifts with Reservation.—Apart from gifts made within three years, gifts or voluntary dispositions made at any time during the donor's life may be liable to duty. Thus, at whatever time a gift is made, if *bonâ fide* possession and enjoyment is not immediately taken and thenceforth retained by the donee, to the entire exclusion of the donor or of any benefit to him by contract or otherwise, Estate Duty is payable on the death of the donor, and the donee is liable to account for it.[4]

[1] F. A. 1910, s. 59 (2).
[2] F. A. 1894, s. 7 (1) (*a*).
[3] F. A. 1910, s. 59 (2).
[4] F. A. 1910, s. 59 (1) & (3).

It comes to this: that Estate Duty cannot be evaded by a person giving away any of his property during his lifetime unless—

(*a*) The donee assumes possession and thenceforth retains the exclusive and beneficial control of the property;

(*b*) The donor absolutely gives up all his interest at the time, or at least three years before his death, and retains no benefit by contract or otherwise;

(*c*) The transaction is completed more than three years before the donor's death.

Thus if the deceased retains a limited interest in the property, as, if he gives away shares more than three years before his death on condition that he may receive the income during his life, Estate Duty will be payable on the full value of the shares on the donor's death, and no deduction for the value of the life interest reserved can be taken.

It is sometimes a matter of considerable difficulty to determine whether a transaction carried out more than three years before the death is a gift, or whether it is a *bonâ fide* bargain and sale for full consideration in money or money's worth, or whether it is a transaction partaking partly of bounty and partly of purchase; and the following rules are given to assist in doubtful cases of this kind:—

(1) Where the reservation to the donor is equal to the average annual income of the property, the transaction is in all cases a gift *inter vivos* and liable to Estate Duty on the donor's death. For example: A. more than three years before his death gives a house to his son, of the value of £30 per

annum, on condition that the son pays him an annuity of £30 per annum. The real effect of the transaction is to reserve a life interest to the father, and Estate Duty is therefore chargeable at his death on the principal value of the property whatever may have been the date of the gift.

(2) Where a gift of money is made, and the amount reserved to the donor is approximately equal to the ordinary rate of interest on the amount, the transaction is a gift *inter vivos* and does not cease to be so merely because the benefit reserved is higher than the average income produced by the property.[1] The result is the same whether the reservation of the annual sum is to the deceased only, or to him for his life, and to other persons for their lives in succession.[2] For instance, A. gives a sum of £1000 to a charity, the arrangement being that the latter shall pay an annuity of £50 to him for life, and on his death to his widow for life. On A.'s death Estate Duty is chargeable on the full sum of £1000; for in effect A. has made a gift of this sum subject to payment of the income at 5 per cent. to him and his wife during their successive lives.

(3) Where the reservation is greater than the average income of the property, but the value of such reservation for the life of the person of the age of the donor at the date of the transaction is less than the value at that time of the property itself, the transaction is a gift and Estate Duty is payable. As an example, a farmer aged sixty gives his farm worth £50 per annum to his son on condition that the latter pays him an annuity of

[1] Attorney-General *v.* Johnson, [1903] 1 K. B. 617. [2] *Ibid.*

£70 for his life. The value of the farm at twenty years' purchase is £1000, while the value of the annuity, calculated according to the Succession Duty tables, is £383 4s. The transaction is clearly, therefore, not based upon full consideration in money or money's worth, and Estate Duty is payable on the value of the farm on the death of the father.[1]

(4) Where the *value* of the reservation in cases similar to No. 3 is approximately equal to or is greater than the value of the property, the transaction is a *bonâ fide* bargain and sale, and no Estate Duty is chargeable.[2] For example: A., a spinster aged fifty-five, possessed of cottage property which requires considerable annual repairs and is troublesome to manage, agrees with a friend B., who is a builder, to convey the property to him in consideration of an annuity of £25 per annum for her life. The value of this annuity is £275 19s. 6d., while the value of the property is about £280. In this case it is clear that no element of bounty on the part of A. entered into the transaction, and no Estate Duty is therefore payable on her death.

(5) Where the donee has to put his hand into his own pocket and the amount he pays and the value of any other reservation to the donor is equal to or greater than the value of the property, no Estate Duty is chargeable. But where, by reason of its being less than the value of the property, Estate Duty is chargeable, if it appeared that the element of part-purchase entered into the transaction, then a deduction could seemingly be

[1] See Attorney-General *v.* Grey, [1900] A. C. 124, and *re* Wm. Clark, deceased, 40 Ir. L. T. R. 117.

[2] F. A. 1894, s. 3 (1), and see Attorney-General *v.* Boden and Another, [1912] 1 K. B. 539.

claimed in respect of the amount which the donee had actually paid out of his own pocket.[1] For example: A., aged sixty, conveys property worth £30 per annum to his son B., the arrangement being that the son shall pay the father's debts, amounting to £300, and also an annuity of £20 per annum during his (the father's) life. The value of the property is £600; the value of the annuity is £194 8s.; so that it cannot be said that the transaction was based upon full consideration in money or money's worth; but the fact that the son paid £300 down out of his own pocket must be regarded as a part consideration in money, and a deduction in respect thereof could be claimed.

In cases of this kind, however, and those which are near the border line between a gift and a purchase, the whole of the circumstances must be regarded and each case considered on its merits. Thus the state of health of the donor at the date of the transaction; the relationship, if any, subsisting between him and the donee; any special circumstances connected with the property, such as a considerable contingent liability for dilapidations which might have to be met; difficulty and expense in managing the property and the impending necessity of considerable repairs; are all factors which should be taken into account.

The benefit reserved to the donor must apparently be determinable at or by reference to the deceased's death so that if it ceases or he releases it more than three years[2] before his death Estate Duty would not be payable.

[1] F. A. 1894, s. 3 (2), and see *re* James F. Lombard, deceased, [1904] 2 I. R. 621.

[2] See Attorney-General *v.* Cobham and Others, [1904] 90 L. T. 816.

The benefit need not be reserved out of the gift itself to attract duty. It is sufficient if there is a benefit reserved at the time the transaction is carried out. For instance, if A. gives a house to B., the arrangement being that the latter pays A. an annuity about equal to the net rents for his life, and enters into a bond to do so, Estate Duty would be payable on the death of A. in respect of the house.[1]

It is, however, essential that the benefit reserved should be enforceable at law.[2] For example: A. gives his house and the furniture in it to his wife absolutely. At A.'s death it is found that he was living in the house up to the date of his death, and therefore it might be urged that he had not entirely divested himself of all benefit and enjoyment from the property. As, however, the donee could presumably sell the property or deal with it as she thought fit, Estate Duty would not be payable as no *enforceable* benefit was reserved by A.

Where the gift included several subjects of property and the benefit is reserved out of one only, Estate Duty would only be payable on that out of which the benefit is reserved; but where the reservation involves the whole of the gift or is a provision outside the property itself, Estate Duty is chargeable on the whole of the property, however small the benefit reserved. As an example: property value £60 per annum is conveyed by A. to B., who by a bond covenants to pay A. £10 per annum for life. On the death of A. Estate Duty would be chargeable on the principal value of the whole property without deduction.[3] But when property is given absolutely, subject only to

[1] Lord Advocate *v.* Wilson, [1894] 21 S.S.C. 4th series 997, a case dealing with Account Stamp Duty under the sections incorporated by F.A. 1894, s. 2 (1) (*c*).

[2] Attorney-General *v.* Seccombe, [1911] 2 K. B. 688.

[3] Attorney-General *v.* Earl Grey, [1900] A. C. 124.

an annuity for the life of the donor which is charged upon the property and has no relation to the income of the property, Estate Duty would seemingly only be payable on his death on so much of the property as was required to produce the annuity. For example: A., being possessed of real estate worth £5000 per annum, more than three years before death conveys it to B. subject to a rent charge of £500 per annum for his (A.'s) life. Although the rent charge covers the whole of the property, the subject-matter of the gift may be regarded as the property, less so much of it as is required to produce the rent charge. On this view Estate Duty would be chargeable, not on the principal value of the whole estate but on the capital value of the rent charge, *i.e.* on $\frac{500}{5000}$ or one tenth of the principal value.[1]

Where the donor reserves no actual benefit but has a power to revoke the gift and retains this power up to the date of his death, Estate Duty would be payable on his death on the full value.[2]

In all cases of a gift with reservation, if the donor should release the benefit more than three years before his death, no Estate Duty is chargeable on such event taking place. In the case of a charity, however, if the release takes place within three years but more than one year before death, Estate Duty will not be payable.[3]

A similar result would follow where the deceased had merely a general power of appointment over property and he absolutely releases the power more than three years before his death. And so also where the deceased

[1] See *re* Cochrane, [1906] 2 Ir. 200, and F. A. 1894, Sections 2 (1) (*b*) & 7 (7) (*b*).

[2] F. A. 1894, s. 22 (2) (*a*), and Lord Advocate *v.* Gunning's Executors, [1907] S. S. C. 800.

[3] F. A. 1910, proviso to s. 59 (1).

was life tenant of settled property and surrendered his life interest more than three years before death to the person entitled in reversion[1] (except where the surrender is to a charity, in which case the period is one year).

No Estate Duty is payable on the death of the deceased in respect of property held by him as trustee for another person under a disposition not made by the deceased or under a disposition made by him more than three years before his death, where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately on the creation of the trust and thenceforward retained to the entire exclusion of the deceased of any benefit to him by contract or otherwise.[2]

It should be noted that certain formalities are necessary to complete an *inter vivos* gift. For instance, chattels such as furniture, jewellery, &c., can be given by delivery to the donee, provided the latter assents to the gift.[3] They may also be transferred by a deed, and in that case actual delivery is not necessary. Stocks and shares in railway or other companies formed under The Companies Clauses (Consolidation) Act, 1845, must be transferred by deed.[4] Shares in joint stock companies must be transferred in the manner provided by the Articles of Association of the company, and in default of any such provision by instrument in writing signed by both transferor and transferee.[5] Policies of assurance must be assigned by instrument in writing, and notice given to the company,[6] and the assignment stamped.[7] Freeholds and leaseholds must be transferred by a properly executed deed. Another

[1] F. A. 1900, s. 11 (1), as amended by F. A. 1910, s. 59.
[2] F. A. 1894, s. 2 (3).
[3] Cochrane *v.* Moore, 25 Q. B. D. 57.
[4] 8 & 9 Vict. c. 16, s. 14.
[5] See Companies (Consolidation) Act, 1908.
[6] 30 & 31 Vict. c. 144, s. 3.
[7] Stamp Act, 1891.

method of making a valid gift *inter vivos* is by way of trust: that is, the donor declares that he stands possessed of the property in trust for the donee. Such a document must in the case of freeholds and leaseholds be evidenced by writing signed by the donor[1]; but in the case of moveable property, unless the gift is made in consideration of marriage,[2] the declaration of trust may be verbal. A verbal trust must, however, be clearly proved.[3]

A gift *inter vivos* which is imperfectly made by reason of the proper formalities being omitted, if made perfect within three years of the death of the donor, will be liable to Estate Duty.

Neither Legacy Duty nor Succession Duty is payable at the death of the donor in respect of out-and-out gifts *inter vivos* made by him. Where, however, there is an enforceable beneficial reservation to the donor which ceases on his death (as of a life interest or an annuity) Succession Duty may be chargeable on the cesser of such interest.[4]

## F.—Property Owned Jointly or Purchased or Invested in Joint Names.

A person is said to be a joint tenant when he holds property jointly with another or other persons, so that on the death of one, without having severed the joint tenancy, his share accrues by survivorship to the other or others. A joint tenant has no power to dispose of his share by will, but during his lifetime he can acquire full dominion by severing the joint tenancy or he can dispose of his own share as he thinks fit.

[1] Statute of Frauds, 29 Car. II. c. 3, s. 7. [2] *Ibid.*, s. 4.
[3] Peckham *v.* Taylor, 31 Beav. 254. [4] Succession Duty Act, 1853, s. 7.

On the death of a joint tenant Estate Duty is payable on his severable share of the property and this is so notwithstanding the fact that, by not severing the joint tenancy in his lifetime, his share has accrued by survivorship to the other joint tenants.[1]

For instance, if A. and B. have a freehold house given them by will as joint tenants, or if they purchase such a house and have it conveyed to them as joint tenants, each providing half of the purchase money, or if they each provide £500 and invest the whole in their joint names, Estate Duty is payable on the death of the first to die, upon his one-half share of the property which thereupon accrues to the survivor. If in the above cases of a purchase or investment the money is provided in unequal proportions, the charge of Estate Duty on the death of one of the tenants extends to that proportion of the value which is attributable to the purchase money provided by him. For instance, if property is purchased jointly for £1300 by A. and B., A. finding £1000 and B. £300, and the property on the death of A., who dies first, is worth £2000, Estate Duty is payable on $\frac{1000}{1300}$ of £2000 = £1538 9s. 2d., that being the proportion of value attributable to A.'s share of the purchase money.

The above remarks apply where the property is beneficially attributable to all the joint tenants, but where the whole was provided by the deceased the case is somewhat different.

Thus where the deceased, having been absolutely entitled to property, has caused it to be transferred to or vested in himself and any other person jointly,

[1] F. A. 1894, s. 2 (1) (*a*).

or where, being absolutely entitled to property, he has effected with it a purchase or investment in the joint names of himself and any other person either by himself alone or in conjunction or by arrangement with any other person, so that on his death the beneficial interest therein or in some part thereof accrues by survivorship to such other person, Estate Duty is payable on the *whole* property on the death of the deceased.[1]

For example: A., being entitled to a freehold house or to a sum of £1000 stock, vests it jointly in himself and B.; or being possessed of £1000, purchases such a house or stock and has the assignment or transfer taken in the joint names of himself and B., with the intent that on A.'s death the beneficial interest is to accrue by survivorship to B.; Estate Duty is payable on the death of A. upon the principal value of the whole of such property, and this is so notwithstanding that during A.'s life a portion of the income was enjoyed by B.

In this connection it should be noticed that where a man makes a purchase or investment in the joint names of himself and his wife, or of himself and child, or of himself and any other person to whom he stands in the relation of a parent, the law presumes an intention on his part to make a provision for such wife, child, or other person, and therefore on his death the property would be assumed to accrue absolutely to the wife, child, or other person[2]; but evidence

[1] F. A. 1894, s. 2 (1) (*c*), incorporating Customs and Inland Revenue Act, 1881, s. 38, as amended by Customs and Inland Revenue Act, 1889, s. 11.

[2] Fowkes *v.* Pascoe, L. R. 10 Ch. 343, and Standing *v.* Bowring, 31 Ch. D. 282.

may be given to show that this was not the intention. On the other hand, where the purchase or investment is made in the joint names of the deceased and any person other than those already indicated, the presumption is the other way, and the surviving joint owner is presumed to hold or be a trustee of the property for the deceased. But this presumption is also capable of being rebutted by evidence to the contrary, showing that the intention of the deceased was to benefit the surviving joint tenant.

For convenience in business the rule as to survivorship between joint tenants does not apply to partnership property which is vested in the partners jointly, nor to money which is invested in property for business or speculative purposes; so that on the death of any owner his share does not accrue to the survivors but forms part of his general estate, and is of course liable to Estate Duty as such.

Property held on an ordinary joint tenancy—that is, where the deceased did not provide the whole—is not in strictness "property settled otherwise than by the will of the deceased" and ought therefore to be aggregated with the deceased's free estate not exceeding £1000 to ascertain the rate of duty. In practice, however, all joint property may be treated as "settled." The effect of this is important, as where the estate, exclusive of property settled otherwise than by the deceased's will, does not exceed £1000, neither Settlement Estate Duty, Legacy Duty, nor Succession Duty is payable, and the estate is not aggregable with any other property passing.[1] Thus if the free estate is £900 and a share of joint property also passes on the deceased's death amounting

[1] F. A. 1894, s. 16 (3).

to £250, the free estate may be treated as not aggregable with the joint property, because the latter is regarded as property settled otherwise than by the will. The rate of duty on the free estate would therefore be £2 per cent., and as the estate does not exceed £1000. it would be exempt from Settlement Estate Duty, Legacy Duty, and Succession Duty. The rate of Estate Duty on the joint property would be £1 per cent. (that is assuming no other aggregable property passed on the death of the deceased), but the property would not be entitled to exemption from the £5 per cent. or £10 per cent. rates of Succession Duty. It is, however, open to the accountable parties, where the free estate and share of joint property together do not exceed £1000, to treat them as constituting "the estate by itself not exceeding £1000," and so gain the exemption from aggregation and from the other duties. Note the analogous practice in the case of interests in expectancy (page 76).

Where property is wholly provided by the deceased, there may be, in the absence of express agreement to the contrary, an implied trust that he shall receive the income during his life although he may arrange for some part to be paid to the other party to the transaction. In these cases, should the other party die first no part of the property would be deemed to pass on his death, and Estate Duty would not be leviable.

Property held by one or more persons in common is not included under this heading, as on the death of one owner his estate is entitled to his severable share attributable to the amount of property contributed by him, and Estate Duty is payable on it as part of his free estate.

G.—Policies of Assurance, also Annuities or other Interests Purchased or Provided by the Deceased.

Under this heading are considered—

(A) Policies of assurance belonging absolutely to the deceased at his death and forming part of the free estate which passed under his will or intestacy.

(B) Policies effected by the deceased on his life where wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of the policy moneys in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

(C) Those provided by the deceased, either by himself alone or in concert or by arrangement with any other person, in respect of the benefit accruing on the deceased's death.

(D) Annuities or other interests purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest arising or accruing by survivorship or otherwise on the death of the deceased.

Policies included in (A) comprise those effected by the deceased on his own life and kept up by him to his death, and also those on the life of another person owned by the deceased. Estate Duty is payable: as to policies on deceased's life on the amount received from

the company, including bonuses: and as to policies on the lives of other persons on the saleable values of such policies at the date of the deceased's death.[1] These amounts are included in the Inland Revenue affidavit as part of the deceased's free estate. It should be noted that a policy on the life of another person who survives the deceased cannot be treated as a reversionary interest and payment of the Estate Duty on it deferred. It must be accounted for at the deceased's death at its then value.

Where a deceased person domiciled abroad is insured in an English assurance company, the company are not entitled to withhold payment of the policy moneys until an *English* grant of representation has been taken out. Their proper course seems to be to pay over the money to the duly constituted foreign personal representative after deducting a sufficient sum to cover any estate or other duty.[2]

Policies included in (B) are also liable to Estate Duty on the death of the deceased.[3]

For example: A., having effected a policy on his life, assigns it by way of gift to B. or settles it and continues to pay the premiums. On A.'s death Estate Duty is payable on the whole value of the policy moneys. Similarly, if A. effects a policy on his own life in favour of B. and pays the premiums up to his death.

Where the policy was only partly kept up by the deceased Estate Duty is only payable on the proportion of the moneys which the premiums paid by him bear to the total of the premiums paid. For instance, if A. effects a policy on his life in favour of B. and subsequently

[1] F. A. 1894, s. 2 (1) (*a*).

[2] 47 & 48 Vict. c. 62, s. 11, as amended by 52 & 53 Vict. c. 42, s. 19; and Haas *v.* Atlas Insurance Co., Limited, [1913] 108 L. T. 373.

[3] F. A. 1894, s. 2 (1) (*c*), and the incorporated sections, and F. A. 1894, s. 2 (1) (*d*).

pays part of the premiums, on his death Estate Duty is only payable on a corresponding proportion of the policy moneys. If, however, at the time of the gift an arrangement was made by which the deceased was to pay part of the premiums, or they were provided for out of other property, Estate Duty would apparently be payable on the whole of the policy moneys as noted at (c) below. Where, however, A., being possessed of a policy on his life the premiums on which he has hitherto paid himself, or which is fully paid, assigns it by way of a gift or settles it, and B., the donee, thenceforth pays the premiums and A. survives the transaction for three years, no Estate Duty is payable on his death for it cannot be said that the payment of the premiums by A. prior to the assignment was a keeping-up of the policy by A. for the benefit of the donee, as the latter may not have been contemplated as a donee.[1]

It should be borne in mind that where policies are assigned by way of gift to a donee they would in any case be liable to Estate Duty as gifts *inter vivos* if the donor died within three years of the gift or within three years from ceasing to pay the premiums.

The liability to Estate Duty is independent of the existence of any obligation on the part of the deceased to keep up the policy. It is sufficient if he does in fact keep it up.

Estate Duty is also payable on policies comprised in (c): viz., those provided wholly or partly by the deceased.[2]

For example, if A. on his marriage settles a policy (on his own life) which had been in existence for some time, the arrangement being that the subsequent premiums

[1] Lord Advocate *v.* Robertson (or Fleming), [1897] A. C. 145.
[2] F. A. 1894, s. 2 (1) (*d*).

should be paid out of the income of the property settled by the wife, Estate Duty is payable on the whole of the assurance moneys on the death of the assured.[1] The reason is that the settlement constituted a provision by the deceased by arrangement with his wife that the policy should be so kept up that on the death of the survivor of the husband and wife the whole of the beneficial interest in the policy moneys should accrue and arise to the children.

And generally, where an assured person makes a settlement of a policy on his life, it would seem that Estate Duty becomes payable on his death, whether the premiums were paid by him or by any other person who was a party to the settlement.[2] For in such cases the policy is in fact a provision by the deceased alone, or in concert or by arrangement with another person or other persons, so that a beneficial interest accrues or arises on the deceased's death.

But the provision must be a substantial one, and therefore where A. on his marriage insures his life and the policy is settled, the arrangement being that the premiums are to be paid out of the income of a fund settled by the wife's father, no Estate Duty would be payable on the death of A.[3] The policy had no value at the date of the settlement and nothing was paid by A. towards keeping it up, nor did he provide any other property; there was therefore no substantial provision by him. Succession Duty would, however,

[1] Attorney-General *v.* Hawkins, [1901] 1 K.B. 285, and Attorney-General *v.* Robinson, [1901] 2 I. R. 67.

[2] Attorney-General *v.* Dobree, [1900] 1 Q. B. 442, and see Attorney-General *v.* Murray, [1904] 1 K. B. 165, and Lethbridge *v.* Attorney-General, [1907] A. C. 19.

[3] See Richardson *v.* Commissioners of Inland Revenue, [1909] 2 I. R. 597.

be payable in such a case, and at the higher rates applicable where Estate Duty has not been paid. The predecessors for such duty would be the deceased as to one moiety and his father-in-law as to the other moiety.[1]

Annuities and interests provided by the deceased comprised in (D) are also liable to Estate Duty on his death.[2] The term "interests" includes policies provided by the deceased referred to in (B) and (C). Annuities may be wholly provided by the deceased, or by him and another person or other persons in concert or by arrangement.

Thus A., by purchase from an insurance company or from the Government, provides an annuity of £50 payable to himself for life, and on his death to his widow for life. Estate Duty is payable on A.'s death on the beneficial interest then accruing or arising: viz., the value of the annuity for the widow's life. If the widow's age at the deceased's death were sixty the value for Estate Duty, calculated by reference to the tables in The Succession Duty Act, 1853, would be £486 0s. 6d., and assuming this to be the saleable value of the annuity, Estate Duty would be payable by her on this sum; but payment might be made by four yearly instalments if desired.[3] So also where A., being in partnership, retires on terms that a sum of £500 per annum is paid to him for his life and on his death £300 per annum to his wife for life, Estate Duty is payable on his death on the annuity of £300 thus provided for his wife. It is assumed in this latter example that as between A. and the other partners the transaction was not by way of gift but for full

[1] See Succession Duty Act, 1853, s. 13.
[2] F. A. 1894, s. 2 (1) (*d*).
[3] F. A. 1896, s. 16.

consideration in money or money's worth. If, however, A. being entitled to the business, gave it over to his sons on terms that the said annual sums were to be paid out of the profits, the full value of the business would, as has been shown, be liable to Estate Duty as a gift with reservation, and the payment of duty on the capital value in such case would of course cover the provision of the annuity of £300 payable out of the profits.

Estate Duty is similarly payable if an annuity, purchased by the deceased, is payable to both him and his wife equally during their joint lives, and on the death of the deceased to the survivor for life. Or the annuity may be so purchased that it commences to be paid to the widow on her husband's death; and generally, whatever the method selected for the annuity to be payable, Estate Duty is chargeable on the whole value of the benefit accruing or arising on the deceased's death.

The annuity or interest may, however, be provided jointly with another person or other persons who contribute a share of the consideration. In these cases, the claim for Estate Duty is confined to the value of the annuity or interest attributable to the deceased's contribution.

If, however, two persons of about the same age jointly purchase a survivorship annuity, each contributing one half of the purchase money, no Estate Duty would be payable, as each annuitant is considered to have provided the benefit taken by him or her on death of the first to die.[1] For example: A. and B., two spinster ladies, purchase a Government annuity of £100 payable to them equally during their joint lives, and on the death of one the whole to the survivor. As they contribute

[1] F. A. 1894, s. 3 (1).

the purchase money in equal shares, Estate Duty is not payable on the death of the first to die, nor would Succession Duty be payable. But where there is considerable disparity between the ages of the annuitants, Estate Duty may be payable. So also where the purchase money is contributed in unequal shares: if the annuitant who dies first were the larger contributor and the annuity were enjoyed in proportion to the respective contributions, Estate Duty and Succession Duty would be payable on the value of so much of the annuity as was attributable to the difference between the contributions. If the annuity were enjoyed equally, Estate Duty and Succession Duty would be payable on the value of a moiety of such difference.

If an annuity is payable on the deceased's death for a limited number of years, Estate Duty is only payable on the value for that period.

It will be noticed that besides annuities, *interests* provided by the deceased are also included in (d), thus bringing under taxation any other arrangement by which the deceased secures a benefit to arise or accrue on his death. An instance of such an arrangement where the benefit was provided by the deceased in concert with other persons has already been given in the case of a policy settled by the deceased so that the premiums are paid out of the income of other property comprised in the settlement.

The interest may also be a capital sum or real property for any estate or interest therein. For instance, A., on retirement from a partnership, arranges that an annuity of £300 per annum shall be paid by the surviving partners to him for life, and on his death an annuity or a lump sum to his wife. On his death Estate Duty would be payable on the annuity or lump sum provided by deceased for his wife.

From the foregoing remarks it will be seen that Estate Duty is payable on all survivorship and nomination policies effected by the deceased, including those effected under The Married Women's Property Act, 1870, and insurances effected in provident or other funds. Thus where the deceased effects a policy on the joint lives of himself and his wife so that the money is payable to the survivor, or where the policy is effected on his life for the benefit of his wife, Estate Duty is chargeable on the deceased's death on the full amount of the policy moneys. But if a wife effects a policy on her husband's life and pays the premiums out of her separate property, Estate Duty would not be payable on the husband's death; though the reverse would be the case if the premiums were paid by the husband.

Estate Duty is similarly payable in the case of provident funds which are aided by employers for the benefit of widows and children of deceased employés, no deduction being allowed in respect of the aid supplied by the employer. For, in effect, the provision is made by the deceased in concert or by arrangement.

Thus moneys or benefits derived under the Customs Funds Regulations, or under the Insurance Regulations of the Crown Agents for the Colonies, or under the various provident or insurance funds established by corporations, assurance societies, railway or other companies for the benefit of their employés, are taxable in full on the death of the assured. For although the funds may be assisted from sources outside the deceased, yet where the assured himself actually or in effect subscribes, he must be considered to provide the benefit accruing on his death. Similarly, annuities and capital sums payable to the widows and children of dissenting ministers are liable to Estate Duty if the contribution

paid by the minister entitles his widow or children to any annuity or capital sum of a fixed or varying amount ascertainable with reference to the amount of the contribution and income of the fund.

No duty is payable, however, if the annuity or capital sum is unenforceable and payable as a matter of charity, no premium being paid. The same result would follow where there is no invested fund and no regular subscriptions, or the amount paid is entirely charitable on the part of the employers and without reference to the subscriptions, if any, paid by the deceased.

A total exception from Estate Duty is provided in the case of annuities of the kind indicated above, which do not exceed £25 per annum. But where there are several of such annuities to the same person, the exemption is confined to the one first granted which does not exceed £25.[1] For example: A. purchases an annuity of £40 for B. to commence on A.'s death, an annuity of £15 for the joint lives of himself and B. and for the life of the survivor, and subsequently purchases an annuity of £10 for B. on the same terms as the annuity of £40. On A.'s death in the lifetime of B., Estate Duty is payable on the annuity of £40 and the annuity of £10, but not on the annuity of £15 which comes within the exemption from Estate Duty. This exemption does not apply to annuities given by the will of the deceased.

Sums paid under the Workmen's Compensation and Employer's Liability Acts by employers as compensation for the death of deceased employés are not liable to Estate Duty on the employé's death, as they are not considered to form part of his estate, nor can they be said to have been provided by him.

[1] F. A. 1894, s. 15 (1).

Estate Duty is not leviable in respect of policies taken out by the deceased for the benefit of a third person in foreign or Colonial insurance offices, unless they are payable in the United Kingdom, or unless they are vested in British trustees resident in the United Kingdom, nor in respect of any annuity or interest which is only payable or recoverable out of the United Kingdom.

Pensions or annuities payable by the Government of India to the widow or children of the deceased who was an officer of such Government, are exempt from Estate Duty notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension, donation, or annuity is paid.[1]

The provisions as to annuities or interests provided by the deceased do not apply where they are charged on property which itself passes on the death of the deceased, as in that case Estate Duty is leviable on the principal value of the property without deduction.

Where any arrangement referred to under this heading was effected for full consideration in money or money's worth, Estate Duty is not leviable on the deceased's death.[2]

### H.—Property in which the Deceased or any Other Person had an Interest, Ceasing on the Death of the Deceased to the Extent to which a Benefit accrues or arises by the Cesser of such Interest.

The last heading dealt with annuities or any interests *arising* on the death of the deceased. This heading deals with interests, such as life interests and

[1] F. A. 1894, s. 15 (3).

[2] F. A. 1894, s. 3 (1), and see Lethbridge *v.* Attorney-General, [1907] A. C. 19.

rent charges and annuities charged on property, *ceasing* on his death, whether he himself enjoyed such interest or not.[1]

The value upon which Estate Duty is payable in these cases is determined as follows:—

(1) If the interest extended to the whole income of the property, Estate Duty is payable on the principal value of that property.[2]

(2) If the interest extended to less than the whole income of the property, Estate Duty is payable on the principal value of an addition to the property equal to the income to which the interest extended.[3]

The effect of an interest ceasing is thus to cause Estate Duty to become payable (*a*) on the principal value of the property where the interest ceasing extends to the whole income, or (*b*) on a "slice" of the property sufficient to produce the interest where the latter extended to less than the whole income.

For example: A., who died before the passing of The Finance Act, 1894, gave an annuity of £50 to B. charged on real estate worth £120 per annum. On B.'s death after the Act, Estate Duty is payable on so much of the property charged as is required to produce £50 per annum: *e.g.* if the property is worth £2400 at his death, on $\frac{50}{120} \times 2400 = £1000$.

It should be noted that this heading deals with interests in property which does not *itself* pass on the deceased's death.[4] Where the property *itself* passes,

[1] F. A. 1894, s. 2 (1) (*b*).

[2] F. A. 1894, s. 7 (7) (*a*).

[3] F. A. 1894, s. 7 (7) (*b*), and see *re* Thomas Townsend, [1901] 2 K. B. 331.

[4] See judgment in Lord Advocate *v.* Maclachlan, [1899] 1 S. S. C. 5th series, 917.

Estate Duty is payable on its principal value, without regard to the interest ceasing. There must also exist property out of which the interest issues. For if an annuity is payable to A. for life under a bond given by B., no Estate Duty is payable on the cesser, as the annuity is dependent on B.'s personal security, and there does not exist any property in respect of which a benefit can arise by the cesser of the annuity.

Property of this kind, which mainly consists of annuities and rent charges charged on property which does not itself pass, is divided into (1) that in which the deceased had an interest ceasing on his death, and (2) that in which some other person had an interest ceasing on the deceased's death.

An illustration of (1) has already been given in the case of an annuity charged on real estate under a disposition taking effect before The Finance Act, 1894.

Under (2) are included estates *pur autre vie* and annuities or rent charges charged upon property for the life of one person for the benefit of another.

Property which is held on lease for one or more lives is also taxable under this heading.

It should be noted that no Estate Duty is payable in the case of the falling in of property held on lease for lives, nor in respect of the determination of any annuity where such lease or annuity was granted for full consideration in money or money's worth.[1] Where there was a part pecuniary consideration it may apparently be deducted from the value on which Estate Duty is payable.[2] See also page 29 as to gifts *inter vivos* with reservation of an annuity.

[1] F. A. 1894, s. 3 (1). [2] F. A. 1894, s. 3 (2).

Property in which the deceased or other person had merely an interest as holder of an office, or as recipient of the benefit of a charity, or as a corporation sole (*e.g.* a bishop, a rector, or a vicar), is exempted from Estate Duty.[1] The effect is to prevent Estate Duty being chargeable upon salaries or profits attached to any office such as that of a judge or ecclesiastical person, or upon pensions and annuities granted by charitable societies.

And where under a settlement an annual sum is payable to a person for his trouble in acting as trustee, Estate Duty is not leviable on the death of the trustee, as he is considered to be entitled as the holder of an office, *i.e.* that of trustee.[2]

Where any interest, such as is considered under this heading, is surrendered more than three years before death, Estate Duty would not be payable, provided *bonâ fide* possession and enjoyment was assumed and thenceforward retained to the entire exclusion of the person who had the interest, and of any benefit to him by contract or otherwise.[3]

## I.—Settled Property.

To some extent the property referred to under this heading has already been dealt with, but as there are numerous provisions relating only to settled property it is convenient to consider it under a separate heading.

[1] F. A. 1894, s. 2 (1) (*b*).

[2] Attorney-General *v.* Eyres and Others, [1909] 1 K. B. 723.

[3] Attorney-General *v.* Beech, [1899] A. C. 53, and see F. A. 1900, s. 11 (1), as amended by F. A. 1910, s. 59, and Lord Advocate *v.* McTaggart Stewart, [1906] 13 Sc. L. T. R. 945.

Property is said to be settled when it stands limited to or in trust for persons by way of succession,[1] and in determining whether a settlement exists the facts as they stood at the date when the instrument came into operation must be considered. Thus if A. by will gives property to B. for life, then to C. for life, and then to D. absolutely, the property is said to be settled by the will of A., for it passes under that instrument to B., C., and D. in succession.

A settlement, if of personal property, may be created, (*a*) by will, (*b*) by any other instrument in writing not under seal, (*c*) by deed—that is, by instrument in writing under seal—or (*d*) verbally. But if it is made in consideration of marriage it must be in writing signed by the party to be charged or some person authorised by him.[2] And if the settlement is of real property it must be in writing signed by the settlor.[3]

It is not material for Estate Duty purposes whether the settlement was voluntary (*i.e.* made without any pecuniary or valuable consideration) or whether it was made in consideration of marriage. If property passes under the settlement on a death Estate Duty is leviable.[4]

The settlement may have been created (1) by the deceased himself, or (2) by some other person. If in either case the property passes on the death of the deceased Estate Duty is payable.

It has already been shown that if a settlement is made by the deceased within three years of his death, Estate Duty is payable thereunder as a disposition *inter vivos*, and this is so even where the deceased did not reserve to himself any interest in the property.

[1] F. A. 1894, s. 22 (1) (*h*) & (*i*).
[2] Statute of Frauds, 29 Car. II. c. 3, s. 4.
[3] *Ibid.* s. 7.
[4] F. A. 1894, Sections 1 & 2 (1) (*b*).

At whatever period the settlement is made, however, if the deceased reserves an interest terminable with his death, Estate Duty is payable on such event. As an example: if A. settles property on himself for life and on his children equally, Estate Duty is payable on A.'s death in respect of the principal value of the property then passing.

If a life interest were reserved, but the income never actually paid to the deceased, Estate Duty would be leviable if the deceased were legally entitled to the life interest at his death.

Where a life interest in settled property may cease on the happening of certain events in deceased's lifetime (as, for instance, his bankruptcy), Estate Duty is leviable on the death of the deceased if the event determining his life interest has not in fact happened or has happened within three years of his death.

Failure of Interest.—It is, however, provided with regard to settled property that where the interest of any person fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.[1]

This provision only applies where—

(1) The property is settled, *i.e.* limited to persons by way of succession; and

(2) Limitations subsequent to the deceased's interest continue to subsist.

For instance, property is settled by X. by deed on A. for life, on her death on her husband B. for life, and on his death on their children. If B. died before A. no

[1] F. A. 1894, s. 5 (3); Attorney-General *v.* Wood, [1897] 2 Q. B. 102; Attorney-General *v.* Glossop, [1907] 1 K. B. 163.

Estate Duty would be payable in respect of the property on his death for his life interest never came into possession, and subsequent limitations, viz., those for the benefit of his children, continue to subsist. The property would, however, be liable to Estate Duty on the death of A. the wife.

ENLARGEMENT.—A corollary to this exception is provided to meet cases where the settlor's interest becomes enlarged. For where a man by deed settles property on himself for life and after his death on any other person or persons, with an ultimate reversion of an absolute interest or an absolute power of disposition to himself, the property is not to be deemed to pass to the settlor on the death of any such other person by reason only that the settlor being then in possession as tenant for life becomes in consequence of such death entitled to the immediate reversion or acquires an absolute power to dispose of the whole property.[1] For this exemption to apply it is necessary—

(1) That the settlor shall be in possession as tenant for life.

(2) That he becomes absolutely entitled by the death of the person to whom interests subsequent to his life interest were given.

Thus if property is settled by A. on himself for life and on his death to his wife for life and on her death on himself absolutely, Estate Duty is not leviable on the death of the wife in the settlor's lifetime, for he being then in possession of the property as life tenant has become in consequence of such death absolute owner again.

[1] F. A. 1896, s. 14, and Attorney-General *v.* Wood, [1897] 2 Q. B. 102.

Reverter to Settlor.—Conversely, where by a disposition of property life interests or interests determinable on death are conferred on other persons jointly or severally or in succession, and such person or persons enter into possession of such interest and thenceforth retain possession to the entire exclusion of the settlor or of any benefit to him by contract or otherwise, and the only benefit retained by him is subject to such interest or interests and no other interest is created by the settlement, then on the death of any such life tenant no Estate Duty is payable in respect of the property by reason only of its reverter to the disponer or settlor in his lifetime.[1] It is, however, specially provided that if the person taking such life or determinable interest had at any time prior to the disposition been competent to dispose, the above exemption is not to apply.

An example of such a reverter to the settlor occurs where A. settles property on B. for life and on his death on C. for life, and on the death of the survivor on himself absolutely. Here, provided B., and on his death C., enter into possession of their respective life interests and retain such possession to the entire exclusion of A. so that he receives no benefit of any kind, Estate Duty is not payable in respect of the property on the death of the survivor of B. and C. in A.'s lifetime, as the property reverts to A. on such death. But if any other interests had been created by the settlement, or if B. or C. had at any time prior to the disposition been competent to dispose of the property, this exemption from duty would not apply. For suppose at one time B. had owned the

[1] F. A. 1896, s. 15, Sub-Sections 1, 2, & 3, and Attorney-General *v.* Penrhyn and Another, [1900] 83 L. T. 103.

property and, in order to evade duty on his death, had given it to A. who had settled it as above; or suppose the settlement had contained an absolute gift to the children of B. and C., and in default of such children the property was to revert to A. the settlor absolutely; in neither case would the exemption apply. In the first case because it could not be said that B. had not at any time prior to the disposition been competent to dispose, and in the second case because other interests, *i.e.* those of the possible children of B. and C., had been created.[1]

A common instance of the operation of this exemption occurs when a landed proprietor gives the use of a cottage to an old servant for life, so that on his death the house is to revert to the settlor. If the servant dies in the settlor's lifetime, Estate Duty would not be payable on the house, though, strictly speaking, it constituted property passing on such event.

Another exempting, or rather postponing, provision deals with property settled by a husband or wife on the other by a disposition taking effect before The Finance Act, 1894. For where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of The Finance Act, 1894, and on his or her death, the survivor becomes entitled to the income of the property settled by such survivor, Estate Duty is not to be payable in respect of such property until the death of the survivor.[2]

[1] Attorney-General *v.* Penrhyn and Another, [1900] 83 L. T. 103, and see Attorney-General *v.* Glossop, [1907] 1 K. B. 163.

[2] F. A. 1894, s. 21 (5), and Attorney-General *v.* Strange, [1898] 2 Q. B. 39.

Thus A., by deed dated 1860, settles property on his wife for life, and on her death on himself for life and then on their children. The wife dies in 1895, leaving her husband, the settlor, surviving: Estate Duty is not payable on her death, although it will be payable on the subsequent death of A. This provision involves three conditions:—

(1) That the settlement shall have taken effect prior to The Finance Act, 1894, coming into operation; and

(2) That the settlor shall be the surviving life tenant: and

(3) That the income and not the *corpus* of the property shall pass to the settlor.

Exemption on Subsequent Passings.—The above provisions in relief of settled property relate mainly to the Estate Duty which otherwise would have been payable on its first passing, but the most important exemption which deals with subsequent passings of the property remains to be considered.

Thus it is provided that if Estate Duty has already been paid in respect of any settled property since the settlement took effect, it shall not be payable in respect thereof until the death of a person who was at his death, or had been at any time during the continuance of the settlement, competent to dispose of such property, and who, if on his death subsequent limitations under the settlement take effect in respect of such property, was *sui juris* at the time of his death, or had been *sui juris* at any time whilst so competent to dispose of the property.[1] Further, neither Legacy Duty nor Succession Duty at £1 per cent. will be payable unless the limits of value for that rate are exceeded.[2]

[1] F.A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13.
[2] *Ibid.*, and F. A. 1910, s. 58 (2).

For instance, A., who dies after The Finance Act, 1910, by will settles property on his wife B. for life, then on his daughter C. for life, then on her husband D. for life, and, subject thereto, on the children of C. and D. Estate Duty is payable on the property on A.'s death as forming part of his free estate, but under the above provision it is not again payable on the death of B., C., or D. Moreover, as all the beneficiaries stand in the relation of lineal issue to A., unless the limits of value for the £1 per cent. rates are exceeded, the property is exempted from Legacy Duty or Succession Duty at £1 per cent.

If, however, either B., C., or D. had been competent to dispose of the property (as, if the testator had given any one of them a *general* power of appointment and such person had been *sui juris* or not under any legal disability), the exemption would not apply and Estate Duty would be again payable on the death of such person, even though he or she did not exercise the power of disposition.[1]

The general effect of the provision is that where property is settled, one payment of Estate Duty is sufficient and covers subsequent passings on the deaths of limited owners, and that Estate Duty is not again payable until the death of a beneficiary who was competent to dispose. As will be explained later, this immunity is to some extent balanced by the charge of a further Estate Duty, called Settlement Estate Duty, at £2 per cent., which is payable where the settlement took effect after The Finance Act, 1894.

Superseded Duties.—It is now possible to consider (*a*) the incidence of Estate Duty on settled property

[1] F. A. 1894, s. 2 (1) (*a*), and Attorney-General *v.* Hay and Others, [1899] 2 Q. B. 245.

where the older superseded duties have been paid or are payable, and (*b*) the effect of a person absolutely entitled in reversion dying before or after The Finance Act, 1894.

And first, a brief explanation of some of the duties under the law in force prior to The Finance Act, 1894, is necessary. An *ad valorem* duty was payable in respect of the deceased's free personal estate which was called Probate Duty where the deceased left a will, and Administration Stamp Duty where he died intestate. For convenience it is generally referred to as Probate Duty. Probate Duty was not payable in respect of real estate.

Supplementing Probate Duty another duty, called Account Stamp Duty, was in certain cases imposed on personal estate under dispositions *inter vivos*. It was payable in respect of personal property which had been dealt with by the deceased in his lifetime, comprising, roughly speaking, the property considered under headings "E" and "F." This duty, like Probate Duty, was not payable on real estate.

Exemption where Probate Duty Paid.—It is provided that Estate Duty shall not be payable on the death of a deceased person in respect of property settled by a will or disposition made by a person dying before the passing of The Finance Act, 1894, in respect of which property Probate Duty or Account Stamp Duty has been paid or is payable unless the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property.[1] It will be noticed that this provision corresponds to the

[1] F. A. 1894, s. 21 (1), and see Attorney-General *v.* Dodington, [1897] 2 Q. B. 373.

exemption of settled property from Estate Duty where such duty has once been paid. It only applies to property passing under dispositions taking effect before The Finance Act, 1894, where the settlor has died before that date, and then only when the deceased life tenant was not competent to dispose. Moreover, it is essential that Probate Duty or Account Stamp Duty shall have been paid or be payable in respect of the property passing. Real estate passing under the will of a person dying before that date is not exempted as it was not liable to Probate Duty or Account Stamp Duty.[1]

Examples illustrating the incidence of these exempting provisions are given as under :—

(1) A., who dies in 1870, by will gives real and personal property to his wife B. for life and on her death to his sons C. and D. equally. B. dies in the year 1910, and D. has predeceased her and died in 1884, leaving a will by which he gives his share to C. Probate Duty was paid in the ordinary course on the death of A. in respect of the personal estate, so that on the death of B. it is exempt from Estate Duty as explained above. The real estate, however, not having borne Probate Duty, is liable to Estate Duty. The share of personal estate falling into D.'s estate (though not his share of real estate) is also liable to Probate Duty under his will, as Probate Duty was payable under the will or intestacy of every person through whom it is necessary to make title to establish the devolution of the property.[2] It should be observed that where shares

[1] As to the incidence of Estate Duty on a mixed fund consisting partly of personal estate and partly of the proceeds of real estate derived under the will of a testator who died before the F. A. 1894, see Berry *v.* Gaukroger, [1903] 2 Ch. 116.

[2] Attorney-General *v.* Partington, L. R. 4 H. L. 100.

of property fall into the estates of persons who died before the passing of The Finance Act, 1894, the old duties are still payable,[1] except that the payment of Estate Duty covers any Legacy Duty at £1 per cent. or Succession Duty at £1 or £1 10s. per cent. which would have been payable under subsidiary devolutions.

(2) A., by deed dated 1890, settles real and personal property on his daughter B. for life, and on her death on her husband C. for life, and on his death on their children D. and E. A. dies in 1893. B. dies in 1911, C. having predeceased her. D. dies in 1893 and E. in 1898, both leaving wills. On B.'s death, Estate Duty is payable on the whole of the settled property as passing under the settlement, no Probate Duty having been paid under the deed. Probate Duty also is payable under D.'s will on his share of the personal estate only, and Estate Duty under E.'s will on his share of both real and personal estate.

(3) A., who dies in November, 1893, by deed dated September of the same year settles real and personal property on himself for life, and then on his wife B. for life, and then on his children equally. One of them dies in 1901. As the settlor reserved a life interest, Account Stamp Duty became payable on the personal property on his death, and on the death of the wife in 1910 it is accordingly exempted from Estate Duty. But the real property is liable to Estate Duty, and Estate Duty is also payable on the estate of the child who died in 1901 on his share of both real and personal property.

[1] F. A. 1894, s. 21 (2).

(4) A., who dies in 1876, by will gives his wife B. an annuity of £500, which he charges rateably on both his real and personal property. On the death of B. in 1912, Estate Duty is payable only on the proportion of the annuity fund attributable in a due course of administration to his real estate. In so far as the annuity is derived from the personal estate which bore Probate Duty on A.'s death, it is of course exempt from Estate Duty. Thus if A.'s personal estate were £20,000 and his real estate £12,000, and the annuity fund or the capital necessary to produce £500 per annum—say, at £3 per cent.—were £16,666 13s. 4d., the proportion of this sum derived from real estate would be $\frac{12000}{32000}$ or three eights. Estate Duty is therefore payable on three eights of £16,666 13s. 4d.[1] The remainder of that sum constitutes settled property which has borne Probate Duty and is therefore exempt from Estate Duty.[2]

It may, perhaps, be as well to mention that where real estate is given upon trust to sell it becomes impressed with the character of personal estate as from the time when the trust comes into operation. So that if an estate of a dead reversioner becomes entitled to a share of such property, it is liable to duty under his will or intestacy as personal estate, even though it has not actually been sold. For instance, A., who dies in 1870, by will gave his real estate to trustees upon trust to sell and hold the proceeds upon trust for his widow B. for life, and then for his son C. absolutely. On B.'s death in 1912 the property falls

[1] F. A. 1894, s. 7 (7) (*b*); see also Berry *v.* Gaukroger, [1903] 2 Ch. 116, where the property passing consists of a mixed fund consisting partly of personal estate and partly of the proceeds of real estate.

[2] F. A. 1894, s. 21 (1).

into the estate of the son C., who died in 1893, as personal estate, although the trustees have not, in fact, converted the property into money. On B.'s death, therefore, Probate Duty is payable under C.'s will as well as Estate Duty under A.'s will. The result would be the same if the trust for sale did not come into operation until the death of B., or if the settlement and trust for sale were created by deed instead of by will.

Formerly, where a reversioner had died before his interest fell into possession the payment of Probate Duty or Estate Duty in his estate exempted the property from Estate Duty on the death of the life tenant,[1] but since The Finance Act, 1910, this exemption has been abolished, except where the reversioner is also the settlor.[2] For instance, A., by deed in 1880, settled personal property on B. for life, then equally on C., who died in 1890, and D., who died in 1895. On B.'s death in 1908 Probate Duty became payable in C.'s estate on his share and Estate Duty in D.'s estate on his share, and these payments exempted the property from Estate Duty as passing on B.'s death under the settlement. Now, however, Estate Duty would be payable under the settlement as well as the other duties.

The only exception is where the dead reversioner is the settlor himself.[3] Thus, if the property had been settled by deed by A. on B. for life and then on himself absolutely, and he died in 1890 and B. in 1911, Probate Duty would be payable in his estate, and this payment would exempt the property from Estate Duty

[1] Attorney-General *v.* Dodington, [1897] 2 Q. B. 373, as to Probate Duty, and Commissioners of Inland Revenue *v.* Priestley (*re* Studdert), [1901] A. C. 208, as to Estate Duty; these decisions are unaffected by F. A. 1910, s. 55.

[2] F. A. 1910, s. 55.

[3] *Ibid.*

under the main instrument on B.'s death. A similar exemption applies where the settlor dies after The Finance Act, 1894, and the duty payable in his estate is Estate Duty. So also where the deceased life tenant's estate is entitled to the share of a deceased beneficiary. For instance: by deed dated 1880, property is settled by X. on A. for life and on her death on her husband B. for life and then on their son C., who died in 1890 intestate, leaving B. his father his only next-of-kin. A. died before The Finance Act, 1894, B. died in 1911, and the property accrues to the deceased son's estate and, if personal, is liable to Probate Duty. From the son's estate it accrues to the estate of B., his next-of-kin, and is liable to Estate Duty accordingly. This latter payment relieves the property from Estate Duty as passing under the main instrument on the death of B. by virtue of the general provision that Estate Duty is not chargeable more than once on the same death.[1]

The above examples deal mainly with the incidence of duty under dispositions taking effect before the passing of The Finance Act, 1894. These will, of course, gradually become extinct, and two examples will now be given of dispositions taking effect after that Act:—

(1) A. dies in 1895, having by will given his real estate and personal estate to his daughter B. for life, and on her death to her children equally. B. dies in 1912, one of her children having predeceased her and died in 1898. Estate Duty was paid on the property at A.'s death as forming part of his free estate. It is not, therefore, again payable on B.'s death,[2] but it is payable under the deceased child's will or intestacy in respect of his share.

[1] F. A. 1894, s. 7 (10). [2] F. A. 1894, s. 5 (2).

(2) A., by deed dated 1896, settles property on his wife B. for life, and on her death on his sons C. and D. B. dies in 1911, C. having died in 1910. Estate Duty is payable on the death of B. and also in C.'s estate on his share. Formerly, as already pointed out, this latter payment would have exempted C.'s share from payment of duty under the deed on B.'s death.

It should be noted that in all these examples it has been assumed that the tenant for life or limited owner was not competent to dispose; for if he were, Estate Duty is payable on his death without regard to the duties previously paid, or those payable in connection with the previous deaths of beneficiaries entitled in reversion. As explained above, where the tenant for life under a settlement becomes entitled under the will or intestacy of a beneficiary who has predeceased him to such beneficiary's share of the settled property, Estate Duty is payable thereon as part of the life tenant's estate, and such duty in that case is not also payable on that share under the settlement, as Estate Duty is not chargeable twice on the same passing.[1]

Dower and Curtesy Estates.—Where a married woman dies possessed of real property after The Finance Act, 1894, intestate, leaving a husband who becomes entitled to an estate by the curtesy, viz., an estate for his life, it is provided that such real estate is to be regarded as property settled by the will of such married woman,[2] so that Estate Duty, having been paid on the property as forming part of her free estate, is not again payable on the subsequent death of her husband, the tenant for life. The result is similar where a man dies possessed of real property, to

[1] F. A. 1894, s. 7 (10). [2] F. A. 1894, s. 22 (3).

one third of which his widow becomes entitled for life by way of dower. And apparently, also, in practice, real property belonging to a married woman or husband who has died intestate *before* The Finance Act, 1894, is regarded as settled property for aggregation and other purposes.

Release of Life Interest.—Where the deceased person or any other person has an interest limited to cease on the death of the deceased, and such interest is released to or for the benefit of the person entitled in reversion, the property is nevertheless still liable to Estate Duty on the deceased's death unless the release was made three years before his death and unless the beneficial interest therein was assumed and retained to the entire exclusion of the deceased or of any benefit to him.[1]

This provision prevents evasion of duty where a tenant for life of property shortly before death releases or surrenders his interest to the person entitled on his death. For example: A. is entitled for her life to a dower interest in the real estate of her husband who died in 1890; in 1904 the real estate is sold by the heir-at-law, the widow voluntarily releasing her dower interest. It she dies within three years of the release Estate Duty is payable on the cesser of her interest under the above provision. It would, however, be otherwise if she received the value of her interest out of the purchase money, as in that case this provision would not apply and no Estate Duty would be payable even if she died within three years. Nor would it apply if a portion of the money sufficient to produce the dower were invested, as Estate Duty would be payable on her death whenever it took place.

[1] F. A. 1900, s. 11 (1), as amended by F. A. 1910, s. 59 (1) & (3).

If the interest is surrendered more than three years before death Estate Duty will still be payable if *bonâ fide* possession and enjoyment of the property was not immediately assumed and thenceforward retained to the entire exclusion of the person who has the limited interest and of any benefit to him by contract or otherwise.[1] If, however, the benefit retained were not enforceable, Estate Duty would not be payable.[2]

Crown Entails.—It is especially provided with regard to any land or chattels settled, whether by Act of Parliament or Royal Grant so that no one of the persons successively in possession is capable of alienating the same (whether his interest is a tenancy for life or in tail), that the provisions of the Finance Acts as to settled property are not to apply, and the property passing on the death of any person in possession of the land and chattels is to be the interest of the successor therein, and such interest is to be valued for Estate Duty purposes in like manner as for the purpose of Succession Duty: viz., on the value of the annual income of the property for the life of the successor.[3] Estate Duty is therefore payable on each devolution and may be paid by four yearly instalments.[4]

This provision applies to Crown entails—that is, estates provided by Parliament in consideration of public services and settled so that they cannot be alienated.[5] Of such a character are the estates attached to the Earldom of Nelson and the Dukedom of Wellington.

The same practice applies to annuities and pensions granted by the State in perpetuity in respect of notable

[1] Lord Advocate *v.* McTaggart Stewart, [1906] 13 Sc. L. T. R. 975.
[2] Attorney-General *v.* Seccombe, [1911] 2 K. B. 688.
[3] F. A. 1894, s. 5 (5). [4] F. A. 1896, s. 16.
[5] *Re* Bolton's Settled Estates, [1904] 2 Ch. 289.

services to the State. If, however, such payments were directed to be "clear of all taxes and deductions whatever," no Estate Duty would be payable.

Notable Works of Art etc.—There is also a special provision with regard to pictures, prints, books, manuscripts, works of art, scientific collections, or things not yielding income which possess a national or other public interest. For where it appears to the Treasury that any such articles are of national, scientific, historic, or artistic interest, whether settled or not, such property shall not on the death of the deceased be aggregated with other property, but shall form an estate by itself and, while enjoyed in kind, be exempt from Estate Duty.[1] But if and when they are sold, Estate Duty becomes payable. The Treasury are to decide, on application being made to them, whether any articles come within this provision, *and the exemption applies only so long as the articles are enjoyed in specie and not sold.* The moment the exemption ceases to be applicable, the person selling the same, or for whose benefit they are sold, is accountable for Estate Duty, and is to deliver an account within one month after the sale.

[1] F. A. 1896, s. 20, as amended by F. A. 1910, s. 63.

# CHAPTER II.

## THE RATES AND AMOUNT OF ESTATE DUTY.

THERE are two species of Estate Duty: viz.—(1) *ad valorem* duty, and (2) the fixed duties. The most important is the former, which derives its name from the fact that it is ascertained from, and payable upon, the net *value* of the property passing on any death. Formerly, Probate Duty, which is in many respects an equivalent of the present Estate Duty, was paid at a fixed rate of £3 per cent. on personal estates of over £1000, so that a person who died leaving a few thousands had to pay at the same *rate* as a millionaire. Estate Duty, however, is payable on a scale of duty graduated from £1 per cent. on estates not exceeding £500 up to £15 per cent. on estates of over £1,000,000.

Ad Valorem Duty.—The scale is now as follows[1]:—

| Where the principal value of the estate | | | | Rate per cent. of Estate Duty |
|---|---|---|---|---|
| Exceeds | £100 | and does not exceed | £500 | 1 |
| ,, | £500 | ,, | £1000 | 2 |
| ,, | £1000 | ,, | £5000 | 3 |
| ,, | £5000 | ,, | £10,000 | 4 |
| ,, | £10,000 | ,, | £20,000 | 5 |
| ,, | £20,000 | ,, | £40,000 | 6 |
| ,, | £40,000 | ,, | £70,000 | 7 |
| ,, | £70,000 | ,, | £100,000 | 8 |
| ,, | £100,000 | ,, | £150,000 | 9 |
| ,, | £150,000 | ,, | £200,000 | 10 |
| ,, | £200,000 | ,, | £400,000 | 11 |
| ,, | £400,000 | ,, | £600,000 | 12 |
| ,, | £600,000 | ,, | £800,000 | 13 |
| ,, | £800,000 | ,, | £1,000,000 | 14 |
| ,, | £1,000,000 | - | - - | 15 |

[1] F. A. 1910, s. 54.

The highest rate of duty is thus £15 per cent. Where the principal value of the estate, whether consisting only of real property or of personal property or of both, does not exceed £100, no Estate Duty at all is payable.

Fixed Duties.—The fixed duties are 30s. and 50s., and may be paid in the following circumstances: viz., where the *gross* value of the property in respect of which Estate Duty is payable, exclusive of property settled otherwise than by the will of the deceased, does not exceed £300, a fixed duty of 30s.; and where such value exceeds £300 but does not exceed £500, a fixed duty of 50s. may be paid, instead of *ad valorem* duty according to the foregoing scale.[1]

The *gross* value of the estate is the test, and no debts, mortgages, or deductions of any kind can be allowed except mortgages and encumbrances on leasehold and freehold property created by the deceased's predecessors in title, or created by the deceased for the purpose of purchasing the property.[2] The provisions for payment of these duties do not apply to settled property passing otherwise than under the will or intestacy of the deceased. It is entirely optional upon the accountable party to pay the fixed duties or not, and in some cases, even where the gross value does not exceed £300 or £500, it may be more advantageous to pay the *ad valorem* duty. For example: where an estate is £500 gross, and there are debts or other proper deductions which would reduce it to £200 net, *ad valorem* duty according to the given scale would only amount to £2, but if the fixed duty were to be paid the amount would be 50s. on a gross estate not exceeding £500.

[1] F. A. 1894, s. 16 (1). [2] F. A. 1910, s. 61 (2).

Generally, in deciding which is the more advantageous course to pursue, the following considerations should be taken into account:—

(*a*) The amount payable if the fixed Estate Duty is paid or duty is paid according to the *ad valorem* scale.

(*b*) Interest at the rate of £3 per cent. is chargeable on the *ad valorem* duty from the date of death in the case of personal estate and from one year from the death in the case of real estate. Such interest is not chargeable upon the fixed duties if paid within a year of the death,[1] even if the estate includes personal estate as well as real estate. But if the fixed duty is paid more than a year after the death, interest is charged from the death.

(*c*) The fixed duty may be paid expeditiously by means of an adhesive stamp affixed to the affidavit.

(*d*) If the fixed duty has been paid and it is afterwards found that assets forming part of the deceased's estate have been omitted from the affidavit, so that the estate is brought over £500 and the *ad valorem* duty has to be paid, no allowance could as a general rule be made in respect of the fixed duty, and such duty would have been forfeited. Since 1903, however,[2] allowance can be made if the Commissioners are satisfied that there were reasonable grounds for the original estimate of the value of the property or that the omission of the additional assets was due to a genuine mistake as to the law.

[1] F. A. 1894, s. 16 (5). [2] Revenue Act, 1903, s. 14.

In any case, where the fixed duty of 30s. has been paid and it is afterwards found that 50s. should have been paid, only the difference between the two amounts is payable, whatever was the cause of the omission.

(*e*) The fees of the Probate Court in the fixed duty cases amount to 15s. only.

(*f*) In ascertaining the gross value no deductions can be taken in respect of debts and incumbrances, but where the estate includes real or leasehold property subject to mortgages not created by the deceased, or mortgages or charges created by the deceased for the purpose of purchasing the property,[1] such mortgages or charges may be deducted in fixed duty cases. And in practice, mortgages on policies made to the issuing office as security for a loan made by it to the deceased, and also mortgages to any other person where notice of mortgage has been given to the insurance company, can be deducted.

(*g*) Interests in expectancy or shares of joint property, though considered to be property settled otherwise than by the will of the deceased, may in general, at the parties' option, be included in the gross estate not exceeding £500, and in that case will obtain the benefit of exemption from Settlement Estate Duty, Legacy Duty, or Succession Duty. Or they may, if preferred, be treated as settled property. For instance, if the free estate were £480 gross and there were an interest in expectancy or a share of joint property worth £400, the fixed duty of 50s. could be paid on the free estate and *ad valorem* duty

[1] F. A. 1910, s. 61 (2).

at £1 per cent. on the reversion or share of joint property. If this alternative course were followed, however, the interest in expectancy or share of joint property would not be entitled to exemption from the other duties. (See also page 74 as to what properties must be taken into account as comprising the net estate not exceeding £1000. Similar principles are applicable in dealing with estates not exceeding £300 or £500).

Estates Not Exceeding £1000.—The above remarks bring under notice a very important provision for the benefit of small estates already incidentally mentioned: that is, where the net value of the property, real and personal, in respect of which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1000, such property shall not be aggregated with any other property passing on the deceased's death, but shall form an estate by itself. And where the fixed duty or Estate Duty at the *ad valorem* rate has been paid on the principal value of that estate, the Settlement Estate Duty, Legacy Duty, and Succession Duty shall not be payable in respect of that estate.[1] Thus, where a deceased person dies possessed of an estate not exceeding £1000, it is not liable to have the rate of duty on it increased by aggregation with any settled property which may pass on the same death. And further, no Settlement Estate Duty, Legacy Duty, or Succession Duty whatever is payable in respect of such estate.

Aggregation.—In ascertaining the rate of duty payable, an important principle has been introduced by the Finance Acts: viz., the principle of aggregation.[2]

[1] F. A. 1894, s. 16 (3).

[2] F. A. 1894, s. 4, as amended by F. A. 1900, Sections 12 (2) and 18, and F. A. 1907, s. 16.

By aggregation is meant the adding together of the various properties passing or deemed to pass on a death in order to ascertain the rate of duty payable in respect of each.

Thus it is provided that for determining the rate of Estate Duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate Duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof. For example: on the death of A., the following properties pass:—(1) His free, real, and personal estate worth £3000; (2) Property settled by his marriage settlement worth £4500; (3) Real estate worth £6000 settled upon him by his father by deed. Now if each of these properties were taken separately, the rate of duty would be £3 per cent. for the first two and £4 per cent. for the third. But under the rule of aggregation they must all be added together to form one aggregated estate amounting to £13,500, and as the rate for an estate of this amount is £5 per cent., Estate Duty must be paid on each property at that rate.

Aggregation only affects property which is actually or notionally chargeable with Estate Duty, so that where property passing is exempted from Estate Duty it is not liable to aggregation.[1]

Property liable to aggregation is subject to the following exceptions:—

(A) Property in which the deceased never had an interest.[2]

(B) Estates not exceeding £1000 in value, excluding property settled otherwise than by the will of the deceased.[3]

[1] F. A. 1894, s. 4. [2] *Ibid.* [3] F. A. 1894, s. 16 (3).

(c) Certain chattels and articles of vertu given to the nation.[1]

(d) Chattels of similar character certified by the Treasury to be of national, scientific, historic, or artistic interest.[2]

(e) Settled property passing under a disposition made by a person dying before The Finance Act, 1894, which would have been liable to Estate Duty on his death if he had died after that Act.[3]

(f) And generally all property which is exempted from Estate Duty.

(a) Property in which the deceased never had an interest, although it passes on his death and is liable to Estate Duty, is not to be aggregated with any other property but is to be an estate by itself and the Estate Duty thereon is to be levied at the proper graduated rate on the principal value thereof. For example: if A. effects a policy for £300 which is irrevocably nominated from the commencement in favour of his wife and children, such policy is regarded as property in which the deceased never had an interest, and Estate Duty would therefore be payable at the rate appropriate to the policy moneys as forming an estate by itself: viz., £1 per cent., and this rate is not liable to be increased by aggregation with any other property passing on A.'s death. If, however, the deceased has a contingent beneficial interest in the policy on failure of the objects of the nomination the policy would be fully aggregable even though such interest never came into operation; for in that case it could not be said that the deceased never had an interest. It follows

[1] F. A. 1894, s. 15 (2).

[2] F. A. 1896, s. 20, as amended by F. A. 1910, s. 63.

[3] F. A. 1900, s. 12 (2), as amended by F. A. 1907, s. 16.

that if property passes on his death in which he had at one time an interest which he had absolutely released, the property would still be aggregable even though he had not an interest at his death. Property in which the deceased never had an interest includes all annuities or other interests purchased or provided by him and coming into existence on his death, and insurances in the Customs and certain other provident funds.

(B) As has been seen, where the net estate, excluding property settled otherwise than by the will of the deceased, does not exceed £1000, such estate is not to be aggregated with any other property but is to form an estate by itself.[1] The estate not exceeding £1000 includes not only the deceased's free estate, *i.e.* that which passes under his will or intestacy, but also all other property liable to Estate Duty passing on his death *except* settled property. To ascertain whether this exemption from aggregation applies, the following property must be taken into account:—

*X*, the property forming the "estate by itself," including—

(1) The deceased's free property;

(2) Property over which he had and exercised a general power of appointment[2];

(3) *Donationes mortis causa;*

(4) Absolute gifts made by the deceased within three years of his death;

(5) Policies on the deceased's life which are kept up by him for a donee to whom he has given the policies; and

[1] F. A. 1894, s. 16 (3).

[2] *Re* Augusta E. Magan, deceased, [1908] 52nd Inland Revenue Report, page 87.

*Y*, unsettled property which itself is entitled to be treated as an estate by itself as being property in which the deceased never had an interest, including—

(1) Annuities and other interests provided by the deceased and arising on his death;

(2) Nomination policies in which the deceased had no contingent or other interest and insurances in the Customs and other provident funds.

If the total of *X* and *Y* does not exceed £1000, *X* is entitled to be treated as an estate by itself and is not aggregable with any other property. Moreover, no Settlement Estate Duty, Legacy Duty, or Succession Duty is payable under the deceased's will or intestacy.

For example: the property passing on A.'s death includes—

*X.*

| | | £ | s. | d. |
|---|---|---|---|---|
| 1. | Free estate ... ... ... ... | 200 | 0 | 0 |
| 2. | Gift made within three years ... | 150 | 0 | 0 |
| 3. | Policy on deceased's life kept up by him for the benefit of a donee ... | 110 | 0 | 0 |
| | | £460 | 0 | 0 |

*Y.*

| | | | | |
|---|---|---|---|---|
| 4. | Annuity purchased by him for his wife and arising on his death worth | 116 | 0 | 0 |
| 5. | Nomination policy ... ... ... | 120 | 0 | 0 |
| 6. | Customs Fund insurance ... ... | 130 | 0 | 0 |
| | Total of *X* and *Y* ... | £826 | 0 | 0 |

As the total does not exceed £1000, the items comprised in *X* form an estate by itself which is not liable to aggregation with any other property. The rate of duty is therefore £1 per cent., and no Settlement Estate Duty, Legacy Duty, or Succession Duty is payable in respect of the free estate, value £200.

The exemption from other duties does not in strictness apply to the gift within three years, or to the policy, but in practice would probably be deemed to apply. In any case the payment of Estate Duty would cover any Succession Duty at £1 per cent. that might otherwise have been chargeable.[1]

Each of the items in *Y* forms an estate by itself as being property in which the deceased never had an interest. Estate Duty is therefore payable at £1 per cent. on each item.

If the total of *X* and *Y* had exceeded £1000 and there had been property worth £3000 passing under the deceased's marriage settlement, the property in *X* would be aggregable therewith; the rate of Estate Duty would be £3 per cent. and there would be no exemption from Settlement Estate Duty, Legacy Duty, or Succession Duty (unless the beneficiaries were lineal issue, in which case no Legacy Duty or Succession Duty would be payable).[2] The rates of Estate Duty on the items in *Y* would, however, still be £1 per cent. Each item remains an estate by itself and is not aggregable with any other property. It is only taken into account for the purpose of ascertaining whether the unsettled property does not exceed £1000.

It should be noted that reversionary interests and joint property are regarded as property settled otherwise than by the will of the deceased. Accountable parties

[1] F. A. 1894, s. 1. [2] *Ibid.*

are, however, in practice in most cases permitted to treat them as forming part of the unsettled estate not exceeding £1000, and in that case all the advantages of so doing will follow. If, however, they are not so treated, they will be fully aggregable with any other settled property and, however small their value, they will not be exempt from Settlement Estate Duty and the 5 per cent. and 10 per cent. rates of Legacy Duty and Succession Duty. This option requires careful consideration, especially where the addition of a reversion or a share of joint property is sufficient to raise the value of the free estate and unsettled property to over £1000.

Property Settled Otherwise than by the Will of the Deceased.—Roughly speaking, all other property passing, apart from that referred to in *X* and *Y* above, constitutes property settled otherwise than by the will of the deceased and will not therefore be included in the "estate by itself" not exceeding £1000. Such other property comprises interests in expectancy and joint property (subject as above); property over which the deceased had, but did not exercise, a general power of appointment; entailed property; settled annuities (*e.g.* an annuity purchased by A. for the joint lives of himself and his wife and for the life of the survivor); property in which the deceased had merely a life interest; and any other property passing which was disposed by way of settlement by some instrument other than the deceased's will so that it is limited to persons by way of succession. All such property, unless it comes under exceptions (A), (C), (D), (E), or (F), is fully aggregable whether it is under £1000 or not.

(C) It is provided, with regard to such pictures, prints, books, manuscripts, works of art, or scientific collections as appear to the Treasury to be of national, scientific, or historic interest, and to be given to or bequeathed for national purposes, or to any university,

or to any county council or municipal corporation, that the Treasury may remit the Estate Duty or any other duty leviable on or with reference to death in respect of such articles, and that such property shall not be aggregable with any other property for the purpose of fixing the rate of Estate Duty.[1]

(D) Chattels of a similar character, including those of artistic interest, may also obtain the benefit of exemption while enjoyed in kind (see page 66 *supra*). It is provided that they are not to be aggregated with any other property but are to form an estate by itself.[2] Should a sale take place, Estate Duty is payable, and the rate of duty is fixed according to the value of the whole collection at the date of the testator's death. Thus if the value of the whole collection at the death were £12,000 and a picture were subsequently sold for £3000, Estate Duty would be payable on the £3000 at £5 per cent., that being the rate for an estate exceeding £10,000 but not exceeding £20,000. It should be noted that when Estate Duty becomes payable it is chargeable by reference to the last death on which the property passed.

(E) Settled property passing under a disposition made by a person dying before The Finance Act, 1894, which would have been liable to Estate Duty if he had died after that Act.[3] This exception includes practically all property passing under a will taking effect before the above Act, and also, in certain cases, property settled by deed so taking effect. Thus A., who dies in 1870, by will gives real estate to B. for life and on her death to C.; B. dies in 1910, and Estate Duty becomes payable. The property, however, forms an estate by itself and is not aggregable with any other property,

[1] F. A. 1894, s. 15 (2).

[2] F. A. 1896, s. 20, as amended by F. A. 1910, s. 63.

[3] F. A. 1900, s. 12 (2), as amended by F. A. 1907, s. 16.

for if A. had died after The Finance Act, 1894, the property would have been liable to Estate Duty. Again, if A. had settled the property by deed on himself for life and then on B. for life, the result would be the same. Again, suppose A. had settled the property directly on B. for life and had died within one year of the settlement, Estate Duty would still have been payable if such death had taken place after the Act, and the property is therefore exempt from aggregation on B.'s death. Where the settlor died within three years but more than one year from the disposition, the exemption is not considered to apply, because, at the date of The Finance Act, 1900, which introduced this exception, the period for gifts *inter vivos* was one year only. The extension to three years was made by The Finance Act, 1910.

(F) Property which is exempted from Estate Duty is not liable to be aggregated (see exemptions from Estate Duty, page 117 *infra*).

The general operation of the principle of aggregation may now be more practically explained by an example as follows:—A. dies in June, 1910, and the following properties pass on his death:—

| | £ | s. | d. |
|---|---|---|---|
| (*a*) His free property, value ... | 260 | 0 | 0 |
| (*b*) Insurance in the Customs Fund | 500 | 0 | 0 |
| (*c*) An interest in expectancy, value | 1400 | 0 | 0 |
| (*d*) Absolute gift within three years of death ... ... ... | 120 | 0 | 0 |
| (*e*) Property comprised in a deed of settlement by deceased's father of which the deceased was tenant for life and over which he had, but did not exercise, a general power of appointment | 8000 | 0 | 0 |
| Carried forward ... | £10,280 | 0 | 0 |

| | £ | s. | d. |
|---|---|---|---|
| Brought forward ... | 10,280 | 0 | 0 |
| (*f*) Property settled by him on his marriage ... ... ... | 600 | 0 | 0 |
| (*g*) Property settled by deceased's uncle on A.'s brother for the life of A. and on A.'s death to C., value ... ... ... | 25,000 | 0 | 0 |
| (*h*) Real property settled by will by A.'s uncle, who died in 1860, on A. for life and upon his death on his children, value... | 12,000 | 0 | 0 |
| (*i*) Personal property settled by will by A.'s father, who died in 1888, on A. for life and upon his death on his children, value... | 5000 | 0 | 0 |
| Total ... | £52,880 | 0 | 0 |

The total value of the whole property is £52,880, and the rate of duty for each property if there were no exceptions would be £7 per cent.

In the first place (*a*), (*b*), and (*d*) constitute property not settled otherwise than by the will of A., and as the total value does not exceed £1000, (*a*) and (*d*) form the "estate by itself not exceeding £1000" and are not therefore liable to aggregation with any other property, and no Settlement Estate Duty, Legacy Duty, or Succession Duty is payable. The rate of Estate Duty on each item is £2 per cent.

(*b*) is not aggregable, being property in which the deceased never had an interest. It is therefore an estate by itself and the rate is £1 per cent.

(*c*), (*e*), and (*f*) are fully aggregable, and the total value being £10,000, Estate Duty is payable on each item at £4 per cent.

(*g*) is not aggregable, being property in which the deceased never had an interest. The rate on it as an estate by itself is £6 per cent.

(*h*) is also an estate by itself as it was settled by a disposition taking effect before The Finance Act, 1894, and would have been liable to Estate Duty if the settlor had died after that Act. The rate is £5 per cent.

(*i*) being personal property which was settled by a disposition taking effect before The Finance Act, 1894, and having borne Probate Duty, is exempt from Estate Duty and is not therefore aggregable.

Settled property upon which Estate Duty has been commuted in the lifetime of the deceased is not exempt from aggregation and therefore on the death of the deceased it should be brought into account for the purpose of ascertaining the rate of duty on the other property which passes on the deceased's death. Of course, if it would have been excepted from aggregation had no commutation been made, the fact that duty had been commuted would not take away this benefit.

Value for Estate Duty.—The rate of Estate Duty having been ascertained, duty is payable on the principal value of the property at the date of death. The principal value is defined as the price which in the opinion of the Commissioners the property would fetch if sold in the open market at the time of the death of the deceased[1]: that is, the gross sale price without deduction for costs of sale. This value is to be ascertained by the Commissioners in such manner and by such means as they think fit. If they are not satisfied with the estimated value they may authorise a person to inspect the property on their behalf and to report to them on its value, and the person

[1] F. A. 1894, s. 7 (5).

in whose charge the property is must permit such inspection at all reasonable times.[1] Where they require a valuation to be made by their nominee the costs of the valuation are to be paid by them,[2] but where a valuation is submitted by the accountable parties in support of their estimate, or a valuation is called for but the valuer is not appointed by the Commissioners, they are not liable for the costs.

In estimating the principal value no reduction is to be made on the assumption that the whole property is to be placed on the market at one and the same time, but where it is proved that the value of property has depreciated by reason of the death of the deceased, the Commissioners in fixing the price are required to take such depreciation into account.[3] This provision mainly applies to cases where the deceased held large blocks of shares in particular companies. Naturally, if the whole block were placed on the market at the time of his death the market would decline. The above provision insures that in arriving at the price for Estate Duty the accountable parties shall be considered to act as reasonably prudent business men who would not throw the whole of the holding on the market at once but would realise gradually

Interests in Expectancy.—Where the deceased was entitled to an interest in expectancy it is necessary in all cases (except, perhaps, where the estate apart from the reversion is under £1000) to ascertain its value, even where it is not intended to pay the duty until the reversion falls into possession, so that such value may be aggregated with the rest of the estate for the purposes of ascertaining the correct rate of duty on the latter.

[1] F. A. 1894, s. 7 (8).
[2] F. A. 1894, s. 7 (9).
[3] F. A. 1910, s. 60 (2).

The duty may be paid in respect of an interest in expectancy either with the duty on the rest of the estate or when the interest falls into possession, and if the payment is postponed, then—

(*a*) For the purpose of determining the rate of Estate Duty on the rest of the estate the value of the interest is to be its value at the date of death, and

(*b*) The rate of Estate Duty on the interest when it falls into possession is to calculated according to its value when it falls into possession together with the rest of the estate as previously ascertained.[1]

Thus, on taking out the grant, the executors have to elect whether they will pay Estate Duty at once on the reversionary interest or when it falls into possession. If they elect to pay at once they can deduct the value of the life interest or life interests upon which the property is expectant and the liability to Estate Duty is disposed of. But if they decide to defer payment, then the value of the interest must still be aggregated with the rest of the estate to obtain the rate of duty on the latter; and when the interest falls into possession, further Estate Duty is payable on the then principal value of the property without any deduction. The rate of duty is ascertained by the aggregation of such value with the value of the rest of the estate as previously ascertained. It may happen, therefore, that where payment is deferred, a higher rate of duty becomes payable on the reversionary property than on the rest of the estate. For example: if the value of the rest of the estate were £4800 and the value of the reversion at the death of the deceased £150, the rate

[1] F. A. 1894, s. 7 (6), and *re* Colonel Eyre, deceased, [1907] 1 K. B. 331.

of duty would be £3 per cent. The value of the reversionary property when it falls into possession is, however, £250, and this sum added to the rest of the estate brings the aggregated estate to over £5000. The rate of duty on the reversionary property would therefore be £4 per cent., while that on the rest of the estate remains at £3 per cent.

It should be remembered that a reversionary interest is regarded as property settled otherwise than by the will of the deceased, and therefore where the rest of the estate is under £1000 it is not aggregable with the reversionary interest. The reversion would, however, be fully aggregable with any other fully aggregable property passing on the death: thus, reversion £500, rest of estate £600, other settled property £850. The reversion and the settled property, being fully aggregable, are liable to Estate Duty at £3 per cent. The rest of the estate is an estate by itself and not aggregable with any other property, and the rate of Estate Duty is £2 per cent. As already explained, however, the accountable parties may, if they find it more advantageous, treat the reversion as part of the "estate by itself not exceeding £1000." In that case it would not, of course, be aggregable with any other settled property and would also gain exemption from Settlement Estate Duty, Legacy Duty, and Succession Duty.

The option as to payment of duty on an interest in expectancy should be exercised once and for all at the time the grant is taken out, but until the grant is applied for the election can be made even though the person upon whose life the interest depended has died. For example: A. died in April 1903, entitled to a reversionary interest expectant on the death of B., aged sixty. B. died in October 1903, and before a grant of representation to A.'s estate had been taken out. A.'s executors can still elect to pay duty on the

reversionary value notwithstanding B.'s death; for until they file the Inland Revenue affidavit leading to the grant of representation they cannot be said to have exercised their option. They are therefore entitled to account for Estate Duty on the reversionary value at A.'s death calculated on the basis of B.'s *then* expectation of life and not merely on the period for which he actually survived A.

Where the executors elect to defer payment and afterwards wish to pay the duty before the reversion has fallen into possession—as where a sale has taken place—payment can only be made on the basis that the duty is commuted. In such cases application should be made to the Commissioners for permission to commute the duty, and this will in general be allowed if the life tenant is in ordinarily good health.[1] The duty is assessed on the value in possession and is discounted on a £3 per cent. basis for the life of the life tenant. The full discount would only be allowed if the tenant for life were in ordinarily good health. If he were not, or if the life interest might terminate in certain events earlier, the allowance would be proportionately reduced or the commutation might be refused. The practice of basing the commutation on the value in possession is followed even though the reversion has been sold.

Where the property itself passes on the deceased's death, and, subject to an intervening life interest, becomes part of the deceased's free estate, Estate Duty is apparently payable on the capital value at once under the original disposition. For instance: property is settled on the deceased for life, then on his wife for life (who survives), and then in default of children (which happens) on the deceased absolutely. Here the deceased

[1] F. A. 1894, s. 12.

is entitled to an absolute reversion on the death of his wife, but the property itself passes under the settlement on his death. Estate Duty is therefore payable on the principal value of the property. If the property is personal estate and is specifically bequeathed by the deceased's will, the Estate Duty must ultimately be borne by his residuary estate as a testamentary expense and not by the settled fund, and the legatee is therefore entitled to the fund without any deduction being made on account of Estate Duty.[1]

Where the deceased is entitled to property on the determination of a lease, such property is not regarded as a reversionary interest,[2] nor is a policy on the life of another person. The duty on such properties is payable at once on their market values at the date of death.

Real Estate and Leaseholds.—In the case of real estate and leaseholds full particulars of the property should be given showing situation, extent, tenure (*i.e.* freehold, leasehold, or copyhold), gross rental, and the terms on which it is let, or, if unlet, the gross assessment to property tax; also the amount of the annual outgoings payable by the landlord such as repairs, insurance, land tax, tithe rent charge, ground rent, or chief rent, drainage charges, or other permanent annual charges. Finally, the market value should be given. It may be estimated by the parties themselves and a professional valuation need not necessarily be obtained, but if it is, it should be annexed to the affidavit and will receive due consideration by the Valuation Branch, to which the question of value is referred for report.

Formerly, the value for Estate Duty of purely agricultural property was limited to twenty-five times the

[1] *Re* Avery; Pinsent *v.* Avery, [1913] 1 Ch. 208.
[2] F. A. 1894, s. 22 (1) (*j*).

gross property tax assessment after making the usual deductions and also deducting for expenses of management not exceeding £5 per cent.[1] This provision was, however, abolished by The Finance Act, 1910, and Estate Duty is now payable on the full market value of agricultural property,[2] except that where it includes labourers' cottages which have a special value as country cottages for townspeople and others, no account is to be taken of any such additional value.[3]

Deductions.—From the gross value of the deceased's free estate deduction may be taken for debts and incumbrances including mortgages and terminable charges[4] and reasonable funeral expenses, but no allowance can be claimed for the following:—

(*a*) Debts incurred or incumbrances created by the deceased which were not incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit.

(*b*) Any debt in respect whereof there is a right of reimbursement from some other person or estate, unless such reimbursement cannot be obtained.

(*c*) More than once for the same debt or incumbrance charged upon different portions of the estate.[5]

Thus, where the deceased in his lifetime covenants to pay a sum on his death to his daughter, no deduction could be made because the debt was voluntary and not created for full monetary consideration.[6] The

[1] F. A. 1894, proviso to s. 7 (5).
[2] F. A. 1910, s. 60.
[3] F. A. 1911, s. 18.
[4] F. A. 1894, s. 22 (1) (*k*).
[5] F. A. 1894, s. 7 (1), and see Cowley *v.* Commissioners of Inland Revenue, [1899] A. C. 198.
[6] Lord Advocate *v.* Alexander's Trustees, [1905] 42 Sc. L. R. 307.

sum would be payable to the daughter without any deduction for Estate Duty, which would therefore fall on the rest of the deceased's estate.[1] If, however, the sum were settled so that Settlement Estate Duty becomes chargeable, the liability to that duty would fall on the settled fund and not on the deceased's estate.[2] Again, where the deceased guarantees a debt, the amount payable under the guarantee may not be deducted unless it is actually paid and cannot be recovered from the principal debtor. Thus, if the deceased has during his lifetime guaranteed an overdraft on a bank to his son and the son becomes insolvent so that the deceased's estate is called upon to pay, an allowance could be claimed. Where the deceased promises to give a subscription to a charity and such sum is unpaid at his death, no deduction may be taken,[3] nor may the value of an annuity which he has voluntarily agreed to pay be deducted.[4]

Debts or incumbrances for which allowance is claimed are to be deducted from the value of the land or property subject thereto, and deduction is not to be taken more than once for the same debt or incumbrance charged on different portions of the estate.[5]

Foreign Debts.—Debts due from the deceased to persons resident out of the United Kingdom are to be deducted primarily against the deceased's personal estate so situate and (unless contracted to be paid in the United Kingdom or charged on property in the United Kingdom) they can only be allowed against the English personal estate to the extent the deceased's personal estate outside the United Kingdom is insufficient.[6] It follows that where

[1] Gray *v.* Gray, [1896] 1 Ch. 620.
[2] Dundas's Trustees *v.* Dundas's Trustees, [1912] Sc. 375, Court of Sess.
[3] Lord Advocate *v.* Gunning's Trustees, [1902] 39 Sc. L. R. 534.
[4] Lord Advocate *v.* Alexander's Trustees, [1905] 42 Sc. L. R. 307.
[5] F. A. 1894, s. 7 (1). [6] F. A. 1894, s. 7 (2).

the deceased is domiciled outside the United Kingdom and Estate Duty is not payable on his personal estate so situate, his foreign or Colonial debts may not be deducted against the English personal estate except to the extent the foreign or Colonial personal estate is shown to be insufficient for payment.

Foreign Property.—In the case of foreign property which is liable to Estate Duty, deduction may be claimed for any foreign duty payable on that property,[1] and also for *extra* expenses of administration not exceeding £5 per cent. where the Commissioners are satisfied that such expense has been incurred by reason of the property being situated out of the United Kingdom.[2] The general rule is that expenses of administration are not deductible against property on which Estate Duty is payable, but in the case of foreign property the *extra* expense of administration up to £5 per cent., *i.e.* the difference between the probable expenses of administration if the property had been in the United Kingdom and the expenses *actually* incurred in administering the foreign property, is allowable.

Allowance of Colonial Duty.—In the case of property in certain British Possessions which either charge no duty or make a corresponding allowance and are designated by the Sovereign by Order in Council, allowance is made *against the Estate Duty* payable on such property in this country of the duty payable in such British Possession.[3]

The allowance is not in any case to exceed the amount of Estate Duty payable on the same property in this country except that where Settlement Estate

[1] F. A. 1894, s. 7 (4). [2] F. A. 1894, s. 7 (3).

[3] F. A. 1894, s. 20. As to the duties payable in British Possessions see *Hanson's Death Duties*, 6th edition, page 859.

Duty is chargeable on the same property, the balance over and above the Estate Duty may be allowed against the Settlement Estate Duty.

Orders in Council have been made applying this provision to most of the larger British Possessions (a list of which is given on page 150), but it does not apply to the Cape of Good Hope, Transvaal, Orange River Colony, Queensland, Rhodesia, and British East Africa.

A similar allowance may be made of the Consular Court fees payable in Crown Colonies and Treaty ports under Consular jurisdiction.

The Colonial assets themselves should be accounted for without deduction except for debts due in the Colony and extra expense of administration, as in the case of foreign property.

Where an Order in Council has not been applied to any British Possession, the duty paid there can only be allowed as a deduction against the property itself, as in the case of foreign property.

The allowance only applies to assets in a British Possession and therefore cannot be made in respect of assets which, though possessing Colonial characteristics, are in strictness English. For instance, shares in a Colonial company which are registered on a register in England and are transferable in the United Kingdom without any act done outside, and bonds of a Colonial company transferable by delivery and actually situate in England at the death.

Mortgages on Settled Property.—Where settled property passes on the death of a life tenant which he and the remainderman had combined to mortgage, the mortgage may be deducted in the Estate Duty account on the death of the life tenant,[1] but not

[1] Earl Cowley *v.* Commissioners of Inland Revenue, [1899] A. C. 198.

where the life tenant is indemnified against interest on the mortgage.[1] In such a case he receives the full income to which he was entitled under the settlement, and therefore on his death the whole property is considered to pass and not merely the equity of redemption.

Where the mortgage debt is allowable, Succession Duty at the higher rates would be payable in respect of the same even though the rest of the property were exempted from such duty by the payment of Estate Duty.[2] The succession in effect extends to so much of the property as escapes Estate Duty.

Where Increment Value Duty is payable on any death, allowance is to be made in respect thereof against the value of the property for Estate Duty.[3]

Timber.—Should the estate include land on which timber, trees, or underwood are growing, the value of such timber &c. is not to be taken into account in estimating the principal value of the estate or the rate of Estate Duty, and Estate Duty is not to be payable thereon but shall, at the rate due to the principal value of the estate, be payable from time to time on the net moneys (after deducting all necessary outgoings since the death) received from the sale of such timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes liable, or would but for this provision have become liable, to Estate Duty. The owners or trustees are required to account for the duty as and when the moneys are received, with interest at £3 per cent. from the date of receipt. But if at any time the timber is sold either with or apart from the land,

[1] Attorney-General *v.* Lord Montagu, [1904] A. C. 316.
[2] *Re* Trevor B. Hamilton's Estate, [1905] 39 Ir. L. T. 272.
[3] F. A. 1910, s. 62.

Estate Duty is payable on the principal value after deducting any Estate Duty paid since the death.[1] The effect is that where an estate includes timber the Estate Duty is payable from time to time on the proceeds of sale of timber, trees, or wood as and when sales are effected. The rate of Estate Duty is ascertained without regard to the value of the timber &c. If the timber as a whole is sold with or apart from the land, Estate Duty is then payable on the principal value subject to an allowance in respect of any Estate Duty paid on the proceeds of felled timber since the death. No duty is chargeable on moneys realised from the sales of underwood when cut.

It has already been shown that in the case of small estates of gross value not exceeding £500, where the fixed duties of 30s. and 50s. are paid, no deductions are allowed. But where such estates include real or leasehold property, mortgages not created by the deceased and mortgages or charges created by the deceased for the purpose of purchasing the property[2] may be deducted. In practice, also, loans by the insurance company and others on policies on the life of the deceased are allowed as stated on page 70.

The duty payable on the Inland Revenue affidavit is to be due on the delivery thereof or on the expiration of six months from the death, whichever first happens.[3] Interest at £3 per cent. is charged from the date of death in respect of Estate Duty on personal estate.[4]

Instalments.—In the case of real estate the accountable parties have an option of payment by instalments: viz., by eight equal yearly instalments or by sixteen equal half-yearly instalments, the first of which is due at the

[1] F. A. 1912, s. 9., and proviso to Sub-Section 5 of s. 61 F. A. 1910.
[2] F. A. 1910, s. 61 (2).
[3] F. A. 1894, s. 6 (7).
[4] F. A. 1896, s. 18 (1).

end of one year from the death, and after that date interest at £3 per cent.[1] is payable on the duty for the time being unpaid. The duty for the time being unpaid may be paid at any time with interest to the date of payment, and if the property is sold all the unpaid instalments must be paid on completion with interest to such date.[2]

If the Estate Duty is paid in full within the year no interest is charged, neither is discount allowed. But if the property is sold within the year interest on the duty is chargeable from the date of completion of the sale.

Should the owner die before all instalments are paid, the unpaid instalments are still payable and are a charge on the property in the hands of the successor.

The Commissioners may, if they think fit, on the application of any person liable to pay Estate Duty or Settlement Estate Duty on real and leasehold property, accept in satisfaction of the whole or part of such duty such part of the property as may be agreed upon.[3] No Stamp Duty is to be payable on the transfer of such property,[4] and the Commissioners are to deal with it in such manner as Parliament may determine.[5] It is entirely within the discretion of the Commissioners as to whether they will themselves accept property under this provision. They may, however, act as intermediaries for any other public department or authority who may desire to purchase.

Annuities.—Where Estate Duty is payable in respect of an annuity or other definite annual sum, whether terminable or perpetual, provided by or in concert with the deceased, the duty may be paid by four equal yearly

[1] F. A. 1896, s. 18 (1).
[2] F. A. 1894, s. 6 (8).
[3] F. A. 1910, s. 56 (1).
[4] *Ibid.*, Sub-Section 2.
[5] *Ibid.*, Sub-Section 3.

instalments, the first of which shall be due at the end of twelve months from the deceased's death, and after that date interest on the unpaid duty is to be paid with each instalment.[1] The duty unpaid may be paid at any time. This provision deals with annual sums arising on the deceased's death where the duty is paid on the value of the life interest. It does not refer to cases of Estate Duty chargeable on annuities *ceasing* on the deceased's death where duty is taken on a "slice" of the property sufficient to pay the annuity. Thus A. retires from business on terms that he shall receive an annuity of £500 for life, and on his death his wife an annuity of £300 for life. On the death of A. Estate Duty is payable on the value of the annuity of £300 for the life of the widow, and the duty may be paid by four instalments as stated above.

Corrections.—Should it be found that too little duty has been paid, owing either to assets being omitted from the Inland Revenue affidavit or account, or the value of any assets being under-estimated, the matter should be corrected by a corrective affidavit or account.[2] Similarly, if too much duty has been paid by reason of assets being wrongly included or over-estimated.[3] In the latter case the appropriate amount of duty is returned with the interest actually paid thereon. Duty is not considered to earn interest in the hands of the Revenue, and therefore in cases of return of duty it is not allowed for the period it has been in hand except where the over-payment was due to an over-valuation by the Commissioners[4] or where the Court orders the Commissioners to pay interest on duty repayable.[5]

[1] F. A. 1896, s. 16.
[2] F. A. 1894, s. 8 (7).
[3] F. A. 1894, s. 8 (12).
[4] *Ibid.*
[5] Sprot's Trustees *v.* Lord Advocate, [1902] 10 S. L. T. (No. 293) 452.

Commutations.—Application may be made to commute duty expectantly payable where the property is taken out of settlement or dealt with in such a manner as to render it expedient to free it from the charge of duty. In general, the question of commutation arises on a sale of settled property by the tenant for life and remainderman, or on the release of a life interest to the remainderman or the assignment by the latter of his interest to the life tenant, or by assignment of both their interests to a third party. Where a sale is made by the trustees under a power in the settlement or will or by the life tenant under the powers of the Settled Land Acts, no commutation is necessary as the presumptive claim for duty on the death of the life tenant shifts from the real estate to the proceeds of sale in the hands of the trustees, and in such cases the purchasers are not concerned to see to the payment of duty.

Where the life tenant and person entitled on his death join to sell the settled property and divide up the proceeds of sale, then, provided the life tenant is in ordinarily good health, a commutation of the duty expectantly payable on his death should be applied for. If the proceeds are divided up in proportion to the interests of the beneficiaries, no Estate Duty would be payable and Succession Duty would be commuted. But if the proceeds were invested and the income paid to the life tenant on the trusts of the original disposition, Estate Duty would be commuted and Succession Duty as well, if chargeable.

Where the life tenant releases his life interest Succession Duty would be commuted; but if the life tenant dies within three years of the release Estate Duty would become payable,[1] and if the payment of Estate Duty exempted the property from Succession Duty the Succession Duty already paid would be returned on application being made.

[1] F. A. 1900, s. 11 (1), as amended by F. A. 1910, s. 59 (1) & (3).

Where Succession Duty only is commuted, it is chargeable at the higher rates (see page 254).

Where real property subject to an annuity created by a disposition before The Finance Act, 1894, is sold and the annuitant receives a proportion of the purchase money approximately equal to the value of his annuity, or such proportion is applied in purchasing an annuity, there would be no expectant liability to Estate Duty on the death of the annuitant, but application should be made to commute Succession Duty. But if a proportion of the purchase moneys were set aside and invested to pay the income to the annuitant for life or if his annuity were charged substitutively on other property, Estate Duty would be payable on the annuitant's death on the funds set aside or on the substituted property, and no commutation would be necessary unless required by the purchaser.

In commutation cases the duty is calculated on the value of the property in possession and discounted on a £3 per cent. basis for the life of the life tenant. For the purpose of ascertaining the rate of duty all property presumptively passing under the disposition under which the commutation is being made is to be taken into account. Thus, if under a settlement considerable real estate is settled on A. for life and a part of it is sold or dealt with in such circumstances that it is necessary to commute the Estate Duty presumptively payable on A.'s death, all the property subject to the settlement which will presumptively pass on A.'s death must be aggregated to find the rate of duty on the property dealt with. Subject as above, no other property which may be expected to pass on the life tenant's death, such as his free estate, is to be taken into account for aggregation.

# CHAPTER III.

## THE PERSONS ACCOUNTABLE FOR ESTATE DUTY.

FOR the purpose of ascertaining the accountable persons, property passing on the death is divided into (A) Property passing to the executor as such, and other personal property of which the deceased was competent to dispose; (B) Property under his control; (C) Property over which he has no control, such as settled property. The executor must pay duty on (A). He may pay the duty on (B) if he thinks fit. He may also pay duty on (C) if requested to do so by the accountable parties. Subject as above, the beneficiaries and trustees are accountable for the Estate Duty.

The executor of the deceased must specify in the Inland Revenue affidavit to the best of his knowledge and belief all the property upon which Estate Duty is payable on the deceased's death.[1] He must do this whether he is accountable for the Estate Duty on all such property or not. Should he not be able to give particulars of any property passing, he should state in the affidavit that other property exists but that he does not know the amount or value thereof and that he undertakes to account for it and pay the duty for which he is liable as soon as particulars are ascertained.[2] He must, however, make full enquiry before presenting the Inland Revenue affidavit, and pay

[1] F. A. 1894, s. 8 (3).

[2] F. A. 1894, s. 6 (3).

Estate Duty on the whole of the personal estate that he knows of notwithstanding that only a limited grant of representation is being applied for.[1]

It should be noted that "Executor" has a wide meaning in connection with Estate Duty.[2] It includes not only the executor or administrator of the deceased but also any person who takes possession of or intermeddles with the personal estate of the deceased. For instance, if a domiciled foreigner owns shares in an English company, and on the death of the owner the company transfer them direct to the foreign executors and no grant of representation has been taken out in England and Estate Duty paid, the company become liable as executors *de son tort* for the penalties of administering the personal estate of a person without obtaining probate.[3] They can only safely transfer the shares on production of a duly constituted English grant of representation.

Though the executor as above defined is bound to specify to the best of his knowledge all the property passing on the death, he is not as executor accountable for the duty in respect of all such property, although if he is also trustee he may be accountable in that capacity.

He is required to pay the Estate Duty in respect of all personal property, wheresoever situate, of which the deceased was competent to dispose, but only to the extent of the assets which he has received as executor or which he might but for his own neglect or default have received.[4] This liability covers (1) property passing

[1] In the goods of Baron Grimthorpe; Beal *v.* Grimthorpe, *Times*, 6th June, and 1st & 8th August, 1905.

[2] F. A. 1894, s. 22 (1) (*d*).

[3] Attorney-General *v.* New York Breweries Co., [1899] A. C. 62.

[4] F. A. 1894, Sections 6 (2) & 8 (3).

to the executor as such, that is the deceased's free personal property in the United Kingdom, including personal property over which the deceased had and exercised a general power of appointment, and (2) other personal property of which the deceased was competent to dispose.

The liability as regards (1) is personal, and the unpaid duty becomes a debt due to the Crown from the executor.[1] The beneficiaries of the property are not themselves liable for the duty, which is payable out of the general personal estate.

But as regards (2), *i.e.* personal property not passing to the executor as such, although he is required to pay the duty, it is also a charge on the property itself.[2] For instance, where the deceased had a share in joint property, the executor must pay the duty, but it ultimately falls on the property itself and is not payable out of the deceased's free personal estate.

Foreign Assets.—And where a deceased person domiciled in this country has foreign or Colonial assets, his executor is liable for the duty thereon, and this is so even where the testator has appointed separate executors resident out of the United Kingdom for his foreign or Colonial property.[3] The liability of the English executor is, however, limited by the amount of the English assets; so that if the duty on the foreign or Colonial assets actually exceeds the amount of the English assets, the English executor would not be liable for any balance of duty after he had paid over the whole of the English assets to the Revenue.[4] Foreign

[1] F. A. 1894, s. 8 (1), incorporating Succession Duty Act, 1853, s. 44.
[2] F. A. 1894, s. 9 (1).
[3] *In re* Consuelo Duchess of Manchester; Duncannon *v.* Manchester, [1912] 1 Ch. 540.
[4] *Ibid.*

assets do not, however, constitute property passing to the executor as such and (except as to assets in a British Possession) the duty thereon is a charge on the property itself[1] (see page 106). It should be paid by the executor out of the personal estate in this country and recovered from the foreign executors or owners.

Works of Art.—Where pictures or other works of art are certified by the Treasury to be of national, scientific, historical, or artistic interest and so exempted from Estate Duty until sold, the executor is not accountable for the duty when a sale takes place,[2] although he is bound to give particulars of such articles in the Inland Revenue affidavit.

The executor may at his option pay the Estate Duty in respect of any other property which by virtue of any testamentary disposition is under his control as, for example, if real estate is devised to him in trust or charged with debts, or it passes to him by virtue of The Land Transfer Act, 1897.[3]

The executor may also, if the parties accountable request him to do so, pay in like manner the Estate Duty in respect of property which is not under his control.[4] For instance, he may at such request pay the Estate Duty on property comprised in the deceased's marriage settlement in which the deceased had only a life interest. The duty would in the first instance be payable out of the free personal estate and then recovered from the trustees or owners of the trust property.

[1] See dictum *in re* Dixon; Penfold *v.* Dixon, [1902] 1 Ch. 248.

[2] See F. A. 1896, s. 20, as amended by F. A. 1910, s. 63, and *in re* Lord Leconfield; Wyndham *v.* Leconfield, 90 L. T. 399.

[3] F. A. 1894, s. 6 (2). [4] *Ibid.*

The executor has thus a discretion as to paying the Estate Duty on other property which is under his control as executor of the deceased person. And in the case of property not under his control he may, if he chooses, pay the duty if the parties who are accountable for it request him to do so. In each case, if he elects to pay he has power to raise the amount of the duty with interest and expenses properly paid or incurred by the sale or mortgage of the property, or any part thereof, and this is so whether the property is or is not vested in him.[1]

The Estate Duty so payable by the executor is to be collected on an Inland Revenue affidavit[2] and is to be due on the delivery thereof, or on the expiration of six months from the deceased's death, whichever first happens.[3] The original Inland Revenue affidavit[4] is that which leads to the grant of probate of the deceased's will or of letters of administration to his estate. The grant should therefore be taken out within six months of the death or within two months of any suit respecting the will or letters of administration which is not concluded within four months after the deceased's death.[5]

The Estate Duty so far as not paid by the executor, *i.e.* on the Inland Revenue affidavit, is to be collected on an *account* giving particulars of the property and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.[6]

Where the executor is not accountable for the duty in respect of property passing on the deceased's death

[1] F. A. 1894, s. 9 (5).
[2] F. A. 1894, s. 6 (2).
[3] F. A. 1894, s. 6 (7).
[4] See F. A. 1894, s. 22 (1) (*n*).
[5] F. A. 1894, s. 8 (1), incorporating Stamp Act, 1815, s. 37.
[6] F. A. 1894, s. 6 (4).

every person to whom the property passes for any beneficial interest in possession, whether limited or absolute, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property or the management thereof is at any time vested and any other person, such as a *bonâ fide* purchaser for value with notice or a volunteer, in whom the same is vested by alienation before the deceased's death or by other derivative title, is to be accountable to the Commissioners for the Estate Duty on the property and to deliver to the Commissioners and verify an account of the property to the best of his knowledge and belief.[1]

This clause is very comprehensive, but only applies where the executor is not accountable, *i.e.* to all property except personal property of which the deceased was competent to dispose. An agent, bailiff, or steward who merely acts for another person in managing the property, or a purchaser for value without notice would not be accountable for Estate Duty under its provisions. But the following persons would be included: beneficiaries in possession, including life tenants and donees of gifts *inter vivos*, trustees, guardians, committees, and persons taking by alienation as volunteers and purchasers for value with notice.

Where the property is held by trustees upon trusts for beneficiaries, the former are the persons primarily liable to render the accounts.[2] Moreover, the liability of beneficiaries is qualified so that they are only liable when the property passes to them for a beneficial

[1] F. A. 1894, s. 8 (4).

[2] *Re* Orford Cartwright *v.* Del Balzo, [1896] 1 Ch. 257.

interest in possession; but it is immaterial whether the interest is a limited one (as, for instance, for life) or an absolute one. Presumably the accountability of beneficiaries is, however, confined to the share of property in which they take a beneficial interest. So that where a fund is divisible among several beneficiaries each of them would only be accountable for the Estate Duty on his own share.

Trustees and the other persons enumerated in the above provision are, it will be observed, only liable to the extent of the property actually received or disposed of by them. This, however, will include property which, but for their negligence, they might have received.

Gifts Inter Vivos.—In the case of a gift made within three years of death the donee is liable to account for and pay the duty. The executors are under no liability beyond specifying particulars of the gift and the name and address of the donee.

Purchasers.—Persons who *after* the deceased's death have purchased or acquired property which does not pass to the deceased's executor as such (as, for instance, his real estate), are not personally accountable; but as will be seen below, Estate Duty in such cases is constituted a charge upon the property itself.

A *bonâ fide* purchaser, for valuable consideration, without notice of the claim for duty is not, however, accountable for Estate Duty on the property purchased by him.[1] Nor would the duty form a charge on the property. But it should be noted that a person is considered to have notice of an instrument, fact, or thing if it is within his own knowledge or would have been if reasonable and proper enquiry

[1] F. A. 1894, s. 8 (18).

had been made, or if in similar circumstances it has or would have come to the knowledge of his counsel, solicitor, or agent in the matter.[1]

Every person who is accountable for Estate Duty,[2] and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable or of the income of any part of such estate is, to the best of his knowledge and belief, if required by the Commissioners, to deliver and verify a statement of such property together with such evidence as they require relating to the property which they have reason to believe to form part of an estate on which Estate Duty is leviable.[3] This provision applies to persons who have taken possession of property, and includes mortgagees in possession, executors *de son tort*, persons to whom the Commissioners believe gifts have been made within three years, &c. It also enables the Commissioners to obtain information from parties who may not be actually accountable for the Estate Duty.

It is presumed, however, that persons who were merely agents, such as bankers, solicitors, and the like, could not be called upon for an account as being persons who had taken possession or administered the estate.

Settlement Estate Duty.—With regard to Settlement Estate Duty, it is provided that the executor is to account for such duty payable in respect of a legacy or other personal property settled by the will of the deceased.[4] This is to be done on an account delivered

[1] Conveyancing Act, 1882, s. 3.

[2] Including an executor *de son tort*; Attorney-General *v.* New York Breweries Co., [1899] A. C. 62.

[3] F. A. 1894, s. 8 (5).

[4] F. A. 1896, s. 19 (2), and *in re* Maryon Wilson; Wilson *v.* Maryon Wilson, [1900] 1 Ch. 565.

within six months after the death or within such further time as the Commissioners allow. Moreover this duty, though it may be payable in respect of property passing to the executor as such, is a charge on the settled property,[1] unless there is an express provision to the contrary,[2] and it would seem that the beneficiaries are also accountable in respect of the property which comes to them. In the case of real estate settled by the deceased's will, or property settled by some other disposition, the trustees are the accountable persons, and the duty is payable out of the settled property unless it is otherwise provided for in the settlement.

Every person who is made accountable for Estate Duty thereby becomes a debtor to the Crown for the duty, and his goods and estate are accordingly liable to satisfy the debt.[3] But in certain cases further security for payment of the duty has been established by making it an actual charge on the property in respect of which it is payable. By this provision a proportion of the property belongs to the Crown as Estate Duty, so that even though the accountable party may dispose of the property it is still liable, and the owner can be restrained from parting with it until the duty is paid.[4] And where the owner is not the accountable party (as, for instance, where the latter has sold the property), the charge in favour of the Crown can be enforced by action.[5]

[1] F. A. 1896, s. 19 (1).

[2] *Re* King; Travers *v.* Kelly, [1904] 1 Ch. 363; *re* Leveridge; Spain *v.* Lejoindre, [1901] 2 Ch. 830; *re* Dyet; Morgan *v.* Dyet, [1903] 87 L. T. 744.

[3] F. A. 1894, s. 8 (1), incorporating Succession Duty Act, 1853, s. 44, and Berry *v.* Gaukroger, [1903] 2 Ch. 116.

[4] F. A. 1894, s. 8 (13).

[5] Attorney-General *v.* Wack, *Times*, 14th June, 1909.

When Estate Duty a Charge.—Estate Duty is made a first charge on all property which does not pass to the executor as such—that is, to the executor in his capacity as personal representative of the deceased person.[1]

Generally speaking, property passing to the executor as such comprises the ordinary personal estate of the testator. It includes personal property over which the deceased had and exercised by will a general power of appointment,[2] and leasehold property,[3] and the Estate Duty thereon is payable out of the residuary personal estate. But it does not include real estate: a deposit in a savings bank payable to a nominee under a nomination made by the deceased; a deposit made in the joint names of deceased and another or others; property vested in the deceased and another person jointly, and passing on deceased's death to the survivor; foreign moveable property; nor property passing under settlements made otherwise than by the will of deceased. The Estate Duty, therefore, on such properties not passing to the executor as such forms a charge upon and is payable out of the property itself, except that property in a British Possession (designated by Order in Council) is expressly exempted from any such charge.[4]

When the duty in respect of property upon which it is a charge has been paid a certificate can be obtained from the Commissioners which is to be conclusive evidence that the duty is a first charge upon the property after the debts and encumbrances allowed in assessing the duty.[5] Thus, where the duty has not been paid and is still outstanding, there is a

[1] F. A. 1894, s. 9 (1).
[2] *Re* Hadley; Johnson *v.* Hadley, [1909] 1 Ch. 20.
[3] *Re* Culverhouse; Cook *v.* Culverhouse, [1896] 2 Ch. 251.
[4] F. A. 1894, s. 20 (2).
[5] F. A. 1894, s. 9 (2).

charge on the property in favour of the Crown. Where, however, it has been paid, the person paying it is entitled to the charge. Application for the certificate should be made by the person paying the duty on the prescribed form,[1] giving a short description of the property and of the debts and encumbrances allowed in the assessment.

Where the executor actually pays the duty in respect of any such property he can recover it from the trustees or owners, but in the case of real estate the duty may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are mentioned in the Act.[2] Therefore, before an executor pays Estate Duty on the testator's real estate, he should come to an arrangement with the devisee as to repayment of the duty, otherwise the devisee could insist on making repayment by instalments.

For the purpose of paying the duty on property not passing to the executor as such or of raising the amount when already paid, a power is given to any person authorised (*e.g.* an executor) or required (*e.g.* trustees and others) to pay the duty, of raising the amount of the duty, interest, and expenses,[3] by sale or mortgage or by creating a charge for a terminable period.[4] This power applies whether the property is vested in such person or not.

Similarly, any person who has a limited interest in the property (as, for instance, a life tenant of settled property), and who pays the duty, is to be entitled to a like charge as if the Estate Duty had

[1] F. A. 1894, s. 8 (14). [2] F. A. 1894, s. 9 (4).

[3] See Harris's Trustees *v.* Harris, [1904] 41 S. L. R. 357, and *in re* MacKechnie, [1898] 6 S. L. T. 242.

[4] F. A. 1894, s. 9 (5).

been raised by means of a mortgage to him.[1] This provides for the case of a limited owner who pays the duty out of his own pocket. A tenant for life is not, however, entitled to a charge for interest on the duty, as he himself is bound to keep down the interest.[2] Nor is he entitled to charge the fee with the expenses of paying the duty or of the petition to the Court.[3] The charge simply extends to the duty itself.

Where property, which does not pass to the executor as such, passes to a person charged with a capital sum or rent charge or an annuity in favour of other persons, the whole Estate Duty and Settlement Estate Duty (if chargeable) are a charge on the property, and should be accounted for by the owner of it and not by the person entitled to the rent charge &c. But it is provided in such cases that an amount equal to the proper rateable part of the Estate Duty and Settlement Estate Duty[4] may be recovered by the person who has rightfully paid the Estate Duty from the person entitled to the rent charge or capital sum.[5] If, however, there is any provision to the contrary,[6] as where an annuity charged on real estate is given "free from any deduction whatever except Income Tax," the above provision as to apportionment will not apply.

[1] F. A. 1894, s. 9 (6); Lord Advocate *v.* Countess of Moray, [1905] A. C. 531; *re* Mexborough; Savile *v.* Mexborough, 88 L. T. 331.

[2] *Re* Earl Howe's Settled Estates; Howe *v.* Kingcote, [1903] 2 Ch. 69.

[3] *Re* Laurie, [1897] 25 S.S.C. 4th series, 636.

[4] *Re* Duke of St. Albans; Loder *v.* Duke of St. Albans, [1900] 2 Ch. 873.

[5] F. A. 1894, s. 14 (1); Cartwright *v.* Duc del Balzo, [1896] 1 Ch. 257; *re* Parker-Jervis; Salt *v.* Locker, [1898] 2 Ch. 643; *re* Hacket; Hacket *v.* Gardiner, [1907] 1 Ch. 385; *re* Cooper, deceased; Poë *v.* Cooper, [1908] 1 Ch. 130.

[6] Wilson *v.* Maryon Wilson, [1900] 1 Ch. 565; *re* Fitzhardinge; Fitzhardinge *v.* Jenkinson, [1899] 80 L. T. 376; *re* Pimm; Sharpe *v.* Hodgson, [1904] 2 Ch. 345; *re* Coxwell's Trusts; Kinloch Cooke *v.* Public Trustee, [1910] 1 Ch. 63; and *re* Egmont's Settled Estates; Lefroy *v.* Egmont, [1912] 1 Ch. 251.

It should be noted that the person from whom the proportion is recoverable is bound by the accounts and valuations of the property chargeable as settled between the party entitled to recover and the Commissioners.[1]

As an example of the incidence of the duty, suppose real estate worth £12,500 and producing £500 per annum passed, under the will of A. who died in 1860, to B. for life, and on his death a legacy of £1000 is charged thereon in favour of C., and an annuity of £100 per annum in favour of D., and subject thereto the property is given to E. B. dies in 1910. Estate Duty is payable by E. at £5 per cent. on the full value of the property, viz. £12,500, without deduction for the £1000 or the annuity. But B. is entitled to recoupment from C. and D. of the proportions of the duty attributable to the benefits taken by them. Thus C. pays £50, *i.e.* £5 per cent. on £1000. The case of D., who is only entitled to £100 per annum for his life, is somewhat different, and E. can only recover from him interest on the duty payable on so much of the real estate as is sufficient to produce the annuity. This "slice" of the estate would be $\frac{100}{500}$ of £12,500 = £2500, and the duty thereon £125. During D.'s life E. is therefore entitled to deduct interest on this sum of £125 from the annuity. If the duty has been raised by mortgage, the rate of interest would be that payable on the mortgage. If not, the rate of duty would be that at which a mortgage could be raised.

The method described above applies in the case of all sums payable out of the annual income of property. Any dispute between the parties themselves as to the proportion of Estate Duty to be borne by any property

[1] F. A. 1894, s. 14 (3).

or person may be determined on application to the High Court, or to the County Court where the amount in dispute is less than £50.[1]

Where a person directs his real estate to be sold the charge of Estate Duty does not shift to the proceeds of sale, but remains a charge in the hands of the purchaser, who should therefore see that the duty is fully paid before completing his purchase. If, however, settled real estate devolves under a will taking effect before The Finance Act, 1894, or under a deed, and the property is sold under a trust or power before the death of the life tenant, who dies after the passing of above Act, the Estate Duty expectantly payable shifts to the proceeds of sale in the hands of the trustees. But if the sale does not take place till after the death of the life tenant, the unpaid Estate Duty remains a charge on the property itself; and the result would be the same if the trust or power of sale did not arise until the life tenant's death.

Limitation of Liability.—No person is liable for Estate Duty under a will or letters of administration for more than six years from the date of settlement of the account in respect of which duty is payable, or from the time for payment of the duty on such account, provided such account was a full and true one and contained all material information.[2] No trustee, executor, or administrator is after the expiration of such six years to be liable for any such duty, provided it can be shown that the account rendered was correct to the best of his knowledge. This provision does not

[1] F. A. 1894, s. 14 (2).

[2] F. A. 1894, s. 8 (2), incorporating Sections 12 to 14 of Customs and Inland Revenue Act, 1889.

apply unless an account has been delivered,[1] and if there has been no delivery before all the duty has become payable there will be no relief from liability until an account has been delivered and six years have elapsed since the assessment of duty.

If after the expiration of twenty years from a death upon which Estate Duty became payable any such duty remains payable and unpaid, the Commissioners may remit it and any interest thereon on application by the accountable parties.[2] This provision, of course, applies whether an account has been rendered or not, and it is not compulsory upon the Commissioners. It applies to all death duties.

The Commissioners are also empowered to remit interest on duty at any time where the amount is so small as not to repay the expense and trouble of calculation and account.[3]

The limitation of liability after six years referred to above only applies to beneficiaries and persons in a fiduciary position such as executors, trustees, &c.; but with regard to real estate it is provided that where there has been a sale for valuable consideration (which includes the consideration of marriage)[4] or a mortgage, the purchaser or mortgagee is not to be liable for payment of Estate Duty after six years from the date of notice to the Commissioners of the fact that the beneficiary, or any person in his right, has become entitled to the property in possession or to the receipt of the income and profits thereof, or after two years from the time for payment of the last instalment or

[1] Attorney-General *v.* Montefiore, 52nd Inland Revenue Report, page 55.

[2] F. A. 1894, s. 8 (11), extended by F. A. 1907, s. 13.

[3] F. A. 1896, s. 18 (1).

[4] *Re* Donelan's Estate, [1902] 1 I. R. 109.

part of the duty; or where there has been no such notice or payment after twelve years from the event which gave rise to an immediate claim for duty.[1]

It should be noticed that this provision applies where the beneficiary has sold or mortgaged the property liable to duty. The limit provided is six years where there has been notice to the Commissioners and twelve years where there has been no such notice or payment. In the latter case it is immaterial that the purchaser or mortgagee had notice of the death giving rise to the claim for duty, and he is not concerned to see that the duty is paid out of the consideration for the sale or mortgage.

The liability of beneficiaries or any persons other than purchasers or mortgagees is not, of course, affected by the above provision.

With regard to the notices and statements to be made, it is specially provided that all affidavits, accounts, certificates, statements, and forms used for Estate Duty purposes are to be in such form and to contain such particulars as may be prescribed, and if the Commissioners require, shall be in duplicate; and accounts and statements shall be delivered and verified by oath and production of books and documents as required.[2] Any person wilfully failing to comply with this provision is liable to a penalty.[3] It will therefore be seen that except where, as in the twelve years period, no notice at all is required, the conditions as to accounts and notice required by the Commissioners must have been fulfilled, and therefore in practice a purchaser or mortgagee will not usually be able to bring himself within the protection afforded by this provision.

[1] F. A. 1894, s. 8 (2), incorporating Sections 12 to 14 of The Customs and Inland Revenue Act, 1889.

[2] F. A. 1894, s. 8 (14).

[3] F. A. 1894, s. 8 (14) and s. 8 (6).

Apart from the foregoing provisions there is no limit to the liability for Estate Duty.[1]

Certificates of Discharge.—In certain cases the Commissioners are empowered or required, where Estate Duty is paid, to grant certificates of discharge, for which no charge is to be made. Thus, in the case of property on which the Estate Duty is a charge, application on the proper form giving particulars of the property should be made by the person paying the duty.[2] A certificate is then endorsed thereon which releases *the property* from all further claims for Estate Duty. It should be noted that the certificate only discharges the property and not the person paying the duty, so that if it afterwards appears that further duty should have been paid, the accountable party would still be liable, but the additional duty would not in these circumstances be a charge on the property. This certificate is mainly required on sales of real property in order to satisfy the purchaser that the property he purchases is not subject to any charge for unpaid duty. It may be granted not only where the Commissioners are satisfied that the full duty has been paid, but also if they are satisfied that it *will be* paid, as, for instance, if the accountable parties give an undertaking or security for its payment. It should be borne in mind that the executor is accountable for the Estate Duty on the leasehold property forming part of the deceased's free estate and that the duty does not constitute a charge thereon.[3] Certificates discharging the property are not therefore granted in the case of such leaseholds.

[1] See Attorney-General (Ireland) *v.* Lordan, [1906] 40 I. L. T. 98.
[2] F. A. 1894, s. 11 (1).
[3] *Re* Culverhouse; Cook *v.* Culverhouse, [1896] 2 Ch. 251.

Where a person is accountable for the Estate Duty in respect of any property passing, he may, after two years from the death of the deceased, apply to the Commissioners, at the same time delivering to them and verifying a full statement to the best of his knowledge of all property passing and the several persons entitled thereto. The Commissioners will then determine the rate of Estate Duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate the property and also the applicant, so far as regards that property, are to be discharged from any further claim for duty, and the Commissioners are required to give a certificate of such discharge.[1] The certificate may be given before the two years have expired if the Commissioners have no reason to believe that any circumstances may come to light which would alter the rate and amount of duty. This certificate discharges both the property and the person paying the duty. For example: if real property passes under the will of A. to B., and for some reason the executors of A. neglected or delayed proving his will, it might be somewhat difficult for B., who is accountable for Estate Duty on the real estate, satisfactorily to dispose of his liability. Under this provision, however, he can after two years, on delivering a full statement to the best of his knowledge of all property passing, make an application to the Commissioners, who will then determine the rate, and on payment of the duty on the property for which B. is accountable, give a certificate of discharge which releases him and the property from further liability.

[1] F. A. 1894, s. 11 (2), as amended by F. A. 1907, s. 14.

No proceedings may be taken by the Commissioners in a British Possession (designated by Order in Council, see page 150) for recovery of Estate Duty, nor is Estate Duty to constitute a charge on any property so situate.[1] As already pointed out, however, the English executor is accountable for the Estate Duty on moveable property outside the United Kingdom.

The Commissioners are empowered, upon the application of a person entitled to an interest in expectancy, to commute the Estate Duty which would become payable in respect of such interest, and accept a certain sum of money down (see pages 95 and 160).[2] On the receipt of this sum the Commissioners are to give a certificate of discharge, which is written upon the back of the receipted account.

Further, in certain circumstances, the Commissioners are empowered to compound the Death Duties by a single payment where, owing to the number of deaths or the complicated nature of the interests of different persons, it is difficult or unduly costly to ascertain the exact amount of the duties payable. In such cases also, they are bound to give a certificate of discharge. This provision applies to Legacy Duty and Succession Duty as well as to Estate Duty.[3]

In all these cases it should be noted that the Commissioners' certificate will not discharge any person (except a *bonâ fide* purchaser for value without notice)[4] from duty where it has been obtained by fraud or failure to disclose material facts.[5] Nor will it affect the rate of duty on any other property which is afterwards shown to have passed on the death.[6]

[1] F. A. 1894, s. 20 (2).
[2] F. A. 1894, s. 12.
[3] F. A. 1894, s. 13 (1).
[4] F. A. 1894, s. 11 (4).
[5] F. A. 1894, s. 11 (3) and s. 13 (3).
[6] F. A. 1894, s. 13 (3).

Any person aggrieved by the decision of the Commissioners as to repayment of overpaid duty, or by the amount of duty claimed, may on payment of the duty or giving security as directed by the Court, appeal to the High Court, or to the County Court where the value of the property does not exceed £10,000.[1] This provision does not apply where the question in dispute is the value of any real or leasehold property.[2] In such cases the appeal is made under the provisions of The Finance Act, 1910, which deals with the land values. See under INCREMENT VALUE DUTY, Chapter XVII., page 314.

[1] F. A. 1894, s. 10.

[2] F. A. 1910 s. 60 (3).

# CHAPTER IV.

## EXEMPTIONS FROM ESTATE DUTY.

MOST of the exemptions from Estate Duty have been already dealt with, and reference is made to the pages where they are more fully discussed.

(1) Certain gifts *inter vivos* (see page 23).

(2) Settled property upon which Probate Duty or Account Stamp Duty has been paid (see page 57).

(3) Immoveable property situate out of the United Kingdom (see page 10).

(4) Moveable property so situate where the deceased owner died domiciled out of the United Kingdom (see page 10).

(5) Property held by the deceased as the holder of an office or as the recipient of charity or as a corporation sole (see page 49).

(6) Property passing by reason of a sale or lease for full money consideration (see page 27).

(7) Property held by the deceased merely as trustee (see page 31).

(8) Settled property upon which Estate Duty has been once paid (see page 55).

(9) The property of common seamen, marines, or soldiers who are killed or die in His Majesty's service.

(10) The estate of a soldier (officer or man) who is killed or dies on service, provided it does not exceed £5000 and so far as it is given to his widow and children.

(11) Estate not exceeding £100 in value (see page 68).

(12) Works of art &c. given for national purposes upon which the Treasury has remitted the duty (see page 77).

(13) Similar articles which appear to the Treasury to be of national, scientific, historic, or artistic interest until sold (see page 66).

(14) Pensions and annuities granted by the British and Indian Governments to the widows and children of deceased officers (see page 46).

(15) Advowsons and Church patronage until sold (see page 9).

(16) A single annuity not exceeding £25 purchased or provided by the deceased (see page 45).

(17) Interests in expectancy sold or mortgaged for full consideration in money before the passing of The Finance Act, 1894.

(18) Property settled by a husband or wife before the passing of The Finance Act, 1894, where the income was enjoyed by the deceased spouse and the property then accrues to the settlor for life. Here the payment of Estate Duty is postponed until the death of the settlor (see page 54).

(19) Enlargement of interest in property which would otherwise have passed (see page 52).

(20) Reverter to the disponer of property which would otherwise have passed (see page 53).

(21) Real estate to the rents of which the deceased was entitled in right of his wife (see page 21).

1. Absolute gifts made during the lifetime of the deceased more than three years before his death are not liable to Estate Duty[1]; Nor are gifts made within that period in consideration of marriage,[2] nor small sums not exceeding £100 for any one donee,[3] nor gifts which are part of the normal annual expenditure of the deceased,[4] nor gifts for public or charitable purposes made more than one year before death.[5] Gifts made more than three years in which a benefit is reserved to the donor are also exempt if the benefit is not legally enforceable[6] or if it is released more than three years before death.[7]

2. Where personal property passed under a disposition made by a person dying before The Finance Act, 1894, and Probate Duty or Account Stamp Duty had been paid, Estate Duty is not payable on the death of a life tenant after the above Act unless he were competent to dispose.[8]

3. Immoveable property outside the United Kingdom is not liable to Estate Duty unless it forms part of the assets of an English partnership or is subject to a trust for sale and vested in English trustees under an English settlement in English form.[9]

[1] See F. A. 1910, s. 59. [2] *Ibid.* [3] *Ibid.* [4] *Ibid.* [5] *Ibid.*

[6] Attorney-General *v.* Seccombe, [1911] 2 K. B. 688.

[7] See F. A. 1900, s. 11 (1), as amended by F. A. 1910, s. 59 (1) & (3).

[8] F. A. 1894, s. 21 (1).

[9] See F. A. 1894, s. 2 (2), and Attorney-General *v.* Johnson and Others, [1907] 2 K. B. 885.

4. Moveable property so situate is not liable if the deceased died domiciled abroad.[1] Where it is settled and passes on the death of a limited owner it is also exempt unless it is vested in trustees resident here under a settlement made in English form.[2]

5. Property in which the deceased was interested only as holder of an office, the recipient of charity, or as a corporation sole[3]—for instance, if the deceased were fellow of a college, or if he were the occupant of an almshouse or in receipt of a charitable pension. Also the benefices of all clergy. Where the deceased is a workman or servant and as the result of a fatal accident compensation became payable to his family Estate Duty would not be payable.

Where the deceased is trustee of property under a deed and receives an annual sum for carrying out the duties of the office, Estate Duty is not payable on his death on the cesser of such annual sum, as he is considered to be entitled merely as the holder of an office.[4]

6. In the case of a *bonâ fide* sale or lease for full consideration in money or money's worth, Estate Duty is not payable on the death of the deceased[5]: thus, if A, who is possessed of cottage property which is troublesome to manage, arranges with B. to sell it to him for an annuity, no Estate Duty would be payable on the cesser of the annuity on A.'s death. If, however, the transaction were in the nature of a gift by A. to B., Estate Duty would be payable (see pages 25 to 30).

[1] See F. A. 1894, s. 2 (2).

[2] Attorney-General *v.* Jewish Colonization Association, [1901] 1 K. B. 123.

[3] F. A. 1894, s. 2 (1) (*b*).

[4] Attorney-General *v.* Eyres and Others, [1909] 1 K. B. 723.

[5] F. A. 1894, s. 3 (1).

But where the transaction is merely a change of security, Estate Duty would be chargeable.[1] For instance, suppose A. is entitled under a settlement to a jointure charged on one estate which the owner desires to sell free from the jointure. In consideration of the jointure being secured on another estate, A. releases her jointure, which is thereupon charged substitutively on the other estate. Estate Duty is nevertheless payable on A.'s death on the cesser of her jointure as the effect of the transaction was merely to change the security.

7. Trust property. This exemption covers trust property under dispositions not made by the deceased and under those made by him.[2] In the case of dispositions not made by the deceased, Estate Duty is obviously not payable, as the deceased held the property merely as trustee and had no beneficial interest. In the case of dispositions made by him under which he was merely trustee, no Estate Duty is payable unless the disposition takes effect as a gift within three years or a gift with reservation (see "GIFTS INTER VIVOS," page 31).

8. Settled property upon which Estate Duty has once been paid is not again liable to Estate Duty until the death of a person who was competent to dispose.[3]

So also where the interest of any person in settled property fails or determines by reason of his death before it becomes an interest in possession and subsequent limitations under the settlement continue to subsist, Estate Duty is not payable.[4]

[1] Attorney-General *v.* Smith Marriott, [1899] 2 Q. B. 595.

[2] F. A. 1894, s. 2 (3), as amended by F. A. 1910, s. 59 (1).

[3] F. A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13.

[4] F. A. 1894, s. 5 (3); Attorney-General *v.* Wood, [1897] 2 Q. B. 102; Attorney-General *v.* Glossop, [1907] 1 K. B. 163.

Land and chattels settled by Act of Parliament or Royal Charter so as to be inalienable do not come within this exemption, and Estate Duty is payable by way of life interest on each death.[1]

9. The property passing on the death of a common seaman, marine, or soldier who shall be slain or die in the service of His Majesty is not liable to Estate Duty.[2] This does not include a warrant officer nor a sergeant. The exemption does not apply to the £5 per cent. and £10 per cent. rates of Legacy Duty or Succession Duty and is permissive, and Estate Duty may be paid if it is more advantageous; thus, in the case of small estates on which Estate Duty is paid, no Legacy Duty or Succession Duty are payable, and therefore it may be more advantageous to pay the Estate Duty and thus obtain exemption from further duties than to claim exemption from Estate Duty and have to pay Legacy Duty or Succession Duty at £5 per cent. or £10 per cent. The £1 per cent. and £1 10s. per cent. rates of the latter duties would not in any case be charged.

10. A further extension of the above exemption was made in connection with the Boer War. It provides that where any person dies from wounds inflicted, accident occurring, or disease contracted within twelve months before death while on active service against an enemy, whether on sea or land, and such person was at the time a soldier, whether officer, non-commissioned officer, or private, or sailor, the Treasury may, if they think fit, on the recommendation of the Secretary of State or of the Admiralty, remit, up to an amount not exceeding £150 in any one case, the whole or any part

[1] F. A. 1894, s. 5 (5).

[2] F. A. 1894, s. 8 (1).

of the Death Duties leviable in respect of property passing to the widow or lineal descendants if the total value for Estate Duty of the property passing does not exceed £5000.[1]

It will be noted that this provision only applies where the death occurred in or in consequence of active service against an enemy and then only if the estate passes to the widow or lineal issue of the deceased and does not exceed £5000. It applies to all Death Duties and not merely to Estate Duty,[2] but the amount remitted must not exceed £150 in any one case.

11. Where the property passing does not exceed £100 no Estate Duty is payable, as no rate of duty is provided.

In cases where the deceased's estate comprised a deposit in the Post Office Savings Bank or in a Friendly Society, and in certain cases of the effects of seamen and soldiers dying on active service, and the pay or pension of soldiers, sailors, and civil servants, the property can be obtained without a grant of probate or letters of administration where the amount does not exceed £100.[3] Where, however, the estate which includes a nomination policy or a savings bank account exceeds £100 after deduction of debts and funeral expenses, a grant should be obtained and Estate Duty paid.

12. As already shown, the Treasury may remit the Estate Duty (or any other duty) in respect of such pictures, prints, books, manuscripts, works of art, or scientific collections as appear to them to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes or to any university or to any county council or municipal corporation.[4]

[1] F. A. 1900, s. 14.
[2] *Ibid.*, and see F. A. 1894, s. 13 (3).
[3] F. A. 1894, s. 8 (1).
[4] F. A. 1894, s. 15 (2).

Application should be made to the Treasury, accompanied by an inventory and valuation of the articles and a statement giving particulars of the corporation &c. to which they are given and of the grounds on which it is contended that they come within the exemption. A letter of acceptance of the gift should also be furnished.

13. Articles as above and other things not yielding income as appear to the Treasury to be of national, scientific, historic, or artistic interest are exempted from Estate Duty while enjoyed in kind, but Estate Duty is to be paid if and when they are sold.[1] This exemption applies whether the articles are settled or not. On a sale taking place, the person selling or for whose benefit the sale is made is accountable for the duty and is to deliver an account within one month of sale. The duty is payable by reference to the last death on which the property passed. Application should be made to the Treasury for their certificate that the articles in question are entitled to exemption under this provision. The application should contain a valuation and inventory of the property and particulars showing the grounds on which it is considered they are entitled to exemption and stating where they may be seen. Broadly speaking, the exemption is intended to apply not to collections as a whole but to particular works of art which are of such national, scientific, historic, or artistic interest that they would be purchased or accepted as a gift or bequest by one of the national collections.

14. Pensions or annuities payable by the Government of India to the widow or child of any deceased Army or Navy officer are exempted from Estate Duty even

[1] F. A. 1896, s. 20, as amended by F. A. 1910, Sections 63 & 96.

though the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.[1] This exemption also applies to such pensions granted by a provincial government in India even where the contribution of the deceased is made voluntarily. Similarly, pensions granted by the British Government to the widow of an Army or Navy officer are not liable to Estate Duty.

15. Advowsons or Church patronage are exempted from duty, but should they be sold Estate Duty is payable.[2] The rate is ascertained by adding the sale moneys to the rest of the estate of which the advowson formed part.

16. A single annuity not exceeding £25 purchased or provided by the deceased either by himself alone or in concert or arrangement with any other person for the life of himself or of some other person and the survivor of them, or to arise on his own death in favour of some other person, is exempt from Estate Duty.[3] If there is more than one such annuity the one first granted is entitled to the exemption.

17. Where an interest in expectancy has been *bonâ fide* sold or mortgaged for full consideration in money or money's worth before The Finance Act, 1894, Estate Duty is not payable by the purchaser or mortgagee. They are, in fact, only liable to pay the same duties that would have been payable if that Act and any amending Acts had not been passed.[4]

So also where the sale or mortgage takes place after the principal Act, but before one or other of the

[1] F. A. 1894, s. 15 (3).

[2] F. A. 1894, s. 15 (4), but see Attorney-General *v.* Peek and Others, [1912] K. 2. B. 192, and footnote to page 9.

[3] F. A. 1894, s. 15 (1).

[4] F. A. 1894, s. 21 (3).

amending Acts, Estate Duty is only payable at the rates in force at the time of sale.[1] This provision relieves a purchaser or mortgagee from liability to a greater amount of duty than he could possibly have taken into account at the time the transaction was carried out.

It should be noticed that this exemption is for the benefit of the purchaser and mortgagee only, and only applies where the sale or mortgage is for *full* consideration in money or money's worth as between parties dealing at arm's length. In the case of a mortgage the practical effect appears to be that the property only escapes Estate Duty if at the time the principal Act came into force the property was not worth more than the mortgage and any unpaid interest.[2]

Where the reversion is expectant on two lives, both of which fall in after The Finance Act, 1894, it is evident that on the death of the first the second life tenant does not come within the exemption from Estate Duty as his interest was not included in the sale or mortgage.[3] Apparently, therefore, Estate Duty is then payable but should be refunded when the second life tenant dies and the reversion falls into possession.

A succession which comes within this exemption from Estate Duty would be liable to the higher rates of Succession Duty (see pages 254 and 279).

18. Where property is settled by a husband or wife, under a disposition taking effect before The Finance Act, 1894, on the other for life and on his or her

[1] F. A. 1900, proviso to s. 12 (1); F. A. 1907, proviso to s. 12, and F. A. 1910, s. 64.

[2] *Re* Vernon, deceased, [1901] 1 K. B. 297.

[3] *Re* Reversionary Interest Society; Attorney-General *v.* Walker, *Times*, 14th May, 1896.

death the settlor becomes entitled for life, Estate Duty is not to be paid until the death of the surviving spouse.[1] The effect is to postpone payment of duty until the death of the spouse who settled the property. It should be noted that it only applies to dispositions taking effect before the principal Act and that the surviving life tenant must be the spouse who settled the property, and the income only and not the *corpus* of the property must pass to him or her.

Allowance of Older Duties and of Colonial Duties.—Where property passes under a disposition taking effect before The Finance Act, 1894, and Legacy Duty or Succession Duty at £1 per cent. or £1 10s. per cent. has been paid on the *corpus*[2] of that property, an allowance can be claimed against the Estate Duty in respect of such prior duty.[3] This allowance may be either the sum actually paid, or duty at the same rate on the sum liable to Estate Duty, and on delivering the account the parties should elect which method they wish adopted. Thus, suppose real estate were given by the will of A., who died in 1870, upon trust to sell, and the proceeds to his son for life and on his death to his children equally. On A.'s death Legacy Duty at £1 per cent. would have been paid on the *corpus* of the property or the proceeds of sale thereof as it devolved as personal estate to persons all liable to the same rate of duty. On the son's death in 1910, Estate Duty would be payable; but the Legacy Duty would be allowed in diminution of the Estate Duty. Thus if the value were £2000, and the rate of Estate Duty £3 per cent.—

[1] F. A. 1894, s. 21 (5), and Attorney-General *v.* Strange, [1898] 2 Q. B. 39.

[2] *Re* Lady Mary Foley, *Times*, 18th May, 1898.

[3] F. A. 1896, s. 21, as amended by F. A. 1907, s. 15.

| | £ | s. | d. |
|---|---|---|---|
| Estate Duty would amount to ... | 60 | 0 | 0 |
| *Less* Legacy Duty at £1 per cent. on £2000 ... ... ... | 20 | 0 | 0 |
| Amount payable ... ... ... | £40 | 0 | 0 |

In the above instance it has been assumed that the value on A.'s death was the same as on the son's death. But suppose the property had depreciated and were worth only £1500 at the latter date. The proper course would then be for the parties to elect not to have an allowance of £1 per cent. on £1500, but to claim an allowance of the amount actually paid. Thus—

| | £ | s. | d. |
|---|---|---|---|
| Estate Duty at £3 per cent. on £1500 | 45 | 0 | 0 |
| Legacy Duty actually paid: viz. £1 per cent. on £2000 ... ... | 20 | 0 | 0 |
| Amount payable ... ... ... | £25 | 0 | 0 |

Legacy Duty or Succession Duty paid by way of *life interest* cannot be allowed against Estate Duty.[1]

As to the allowance against Estate Duty of duty paid in a British Possession,[2] see pages 89 and 149.

The mere fact that in any particular case the allowances referred to above may exhaust the Estate Duty does not affect the liability of the property to aggregation. This possibility furnishes the only instance of property, in respect of which (on balance) no Estate Duty is payable, being liable to aggregation.

[1] *Re* Lady Mary Foley, *Times*, 18th May, 1898. [2] F. A. 1894, s. 20.

# CHAPTER V.

## SETTLEMENT ESTATE DUTY.

THIS duty was first imposed by The Finance Act, 1894,[1] and is an additional Estate Duty charged on settled property. As already explained, when Estate Duty has once been paid on settled property it is not again payable until the settlement comes to an end however many devolutions on death there may be in the meantime, provided that none of the deceased persons has at any time been competent to dispose.[2] As a set-off to this freedom from duty Settlement Estate Duty was imposed. It is payable at a fixed rate of two per cent. As originally imposed the rate was one per cent., but was increased to two per cent. by The Finance Act, 1910.[3]

It is payable where property is settled by the will of the deceased or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose.

To this statement there are two exceptions:

(*a*) Where the only life interest under the settlement after the death of the deceased is that of the widow or husband Settlement Estate Duty is not payable.[4]

[1] F. A. 1894, s. 5 (1).

[2] F. A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13.

[3] F. A. 1910, s. 54.

[4] F. A. 1894, s. 5 (1) (*a*).

(*b*) The duty is also not payable under any disposition which has taken effect before The Finance Act, 1894.[1]

Property is said to be settled when it stands for the time being limited to or in trust for any persons by way of succession, whether absolutely or contingently, and whether there is technically a life interest or not.[2] The disposition is none the less a settlement because the interests of any of the tenants may determine not only on death but by some other event such as marriage, bankruptcy, alienation, &c.

The duty may be payable—

(*a*) Under the will of the deceased.

(*b*) Under any other disposition if the property passes on the death of the deceased to some person not competent to dispose.

For instance, A. by will settles a house on his wife for life, and then on his daughter for life, and on her death to her children; Settlement Estate Duty is chargeable on the death of A. because the property is settled by his will and the wife's is not the only life interest.

Again, if A. during his lifetime by deed in 1910 settled £4000 on himself for life and then on his daughter for life and then on her children, Settlement Estate Duty is payable on his death under the disposition made by him because the property passes under that disposition to a person not competent to dispose.

Where the claim for Settlement Estate Duty arises under a deed, the Stamp Duty paid on the deed can be claimed as a deduction against the Settlement Estate

[1] F. A. 1894, s. 21 (4).

[2] F. A. 1894, s. 22 (1) (*h*) & (*i*).

| | | | |
|---|---|---|---|
| Duty.[1] For instance, in the foregoing example the Settlement Estate Duty would be ... ... | £80 | 0 | 0 |
| *Less* Stamp Duty at 5s. per cent.[2] ... | 10 | 0 | 0 |
| Balance payable ... ... ... ... | £70 | 0 | 0 |

Contingent Settlements.—In the case of an absolute settlement the incidence of duty is in general clear, but Settlement Estate Duty is also payable under a contingent settlement or settlement on a contingency.[3] The contingency in such cases is an event happening after the death of the deceased which causes the property to devolve by way of settlement. Thus where A. by will gives property to his son on attaining twenty-five absolutely, but if he dies under that age to his daughter for life and on her death to her children, the property is settled on a contingency: viz. that of the son dying under twenty-five; Settlement Estate Duty is therefore chargeable and is payable at the date of the testator's death.

Return of Duty.—With regard to contingent settlements, however, it is provided that where it is afterwards shown that the contingency has not arisen and cannot arise, the duty shall be repaid.[4] Thus in the above case, in the event of the son attaining twenty-five application should be made for the return of the Settlement Estate Duty.

[1] F. A. 1894, s. 5 (4).

[2] Note that by F. A. 1910, s. 74, an instrument chargeable both as a settlement and as a conveyance or transfer operating as a voluntary disposition *inter vivos* will now pay Conveyance Stamp Duty and not Settlement Duty. Such deed has to be adjudicated upon by the Commissioners of Inland Revenue. Apparently this section does not apply where the consideration is marriage and therefore the Stamp Duty on marriage settlements remains at 5s. per cent. But in the case of other settlements the increased Stamp Duty can seemingly be allowed against Settlement Estate Duty.

[3] Attorney-General *v.* Fairley and Others, [1897] 1 Q. B. 689; Attorney-General *v.* Clarkson, [1900] 1 Q. B. 156; and Watherston's Trustees *v.* Lord Advocate, [1901] 3 S. S. C. 5th series, 429.

[4] F. A. 1898, s. 14.

In considering the incidence of Settlement Estate Duty, particularly under contingent settlements, the reason for charging Settlement Estate Duty should be borne in mind. If the property is settled then Settlement Estate Duty is chargeable and the property is freed from further Estate Duty until the settlement comes to an end, however many deaths of limited owners may occur in the meantime. If, however, the property is not settled and is claimed not to be liable to Settlement Estate Duty, then it cannot be afterwards claimed, when it passes on subsequent deaths, that it is exempt from Estate Duty on the ground that it is settled. In other words, it cannot be treated as not settled so as to be exempt from Settlement Estate Duty and afterwards treated as settled so as to be entitled to exemption from Estate Duty when that duty has been paid once.

Where property is given to a person for life and on his death as he shall appoint, Settlement Estate Duty is not payable on the original testator's death, as the beneficiary is competent to dispose and the property would be liable to Estate Duty on his death. But if the beneficiary by his will so exercises the power that a settlement is created, Settlement Estate Duty would be chargeable by reference to his death. Where the life tenant's power to appoint is limited to certain persons or among a limited class, Settlement Estate Duty would of course be chargeable on the original testator's death.

Annuities.—Where simple annuities are given without any direction as to how they are to be paid, Settlement Estate Duty is not chargeable in respect of them, but where the residuary estate is settled, Settlement Estate Duty is chargeable and no deduction for the value of the annuities may be taken as the property out of the income of which the annuities are payable is settled.[1]

[1] See *re* Grant; Walker *v.* Martineau, 31 W. R. 703.

If, however, the annuity is directed to be purchased, the purchase money is deductible in the Settlement Estate Duty account of the residuary estate, as to that extent the estate is not settled. Subject as above, where an annuity is given *simpliciter* Settlement Estate Duty is not chargeable.

Where there is a direction to set apart capital to provide for annuities, Settlement Estate Duty is chargeable on such capital whether the residue is settled or not.[1] Where there is only a *power* to set aside capital for the annuity, Settlement Estate Duty is chargeable if capital is in fact set aside.

Annuities directed to be paid out of income of property are chargeable with Settlement Estate Duty whether the property out of which they are payable is settled or not. The duty is payable on a "slice"[2] of the property sufficient to provide the annuity.

An annuity *simpliciter* charged on unsettled real estate or leaseholds is not liable to Settlement Estate Duty.

It should be noted that there need not be a clear life interest for Settlement Estate Duty to be chargeable. It is sufficient that the property should devolve by way of succession. For instance: A. by will gives half the income of his residuary estate to his wife for life and the other half to his daughters during the same period, and on the death of his wife he directs his estate to be divided between all his children then living. Settlement Estate Duty is payable on half the residuary estate, for the daughters may all die in the widow's lifetime and in that case their shares would

[1] Attorney-General *v.* Owen and Others, [1899] 2 Q. B. 253; Attorney-General *v.* Coulson and Another, [1899] 2 Q. B. 253, and *re* Campbell, [1902] 1 K. B. 113.

[2] Ascertained on the principle laid down by F. A. 1894, s. 7 (7) (*b*).

have devolved by way of succession. If, however, they survived the widow, application could be made for the return of the duty.[1]

It has been stated that Settlement Estate Duty is not chargeable under a disposition taking effect before The Finance Act, 1894,[2] and this exemption was formerly regarded as applying where the deceased had a general power to appoint under such a disposition and settled the property by will. In such cases the exercise of the power was read into the disposition creating it, and the settlement was therefore attributable to the earlier disposition. Now, however, it would seem that as far as Estate Duty and Settlement Estate Duty are concerned, the distinction between a general *power* to dispose of property and absolute ownership is regarded as immaterial where the deceased exercises the power and thus makes the property his own. Settlement Estate Duty would therefore be claimed if under a disposition taking effect before The Finance Act, 1894, he had a general power by will to appoint and exercised it in such a way as to create a settlement.

Except in the case of reversionary interests, Settlement Estate Duty is invariably payable as at the death of the deceased and on the value of the property as at that date. It is subject to the like conditions as Estate Duty with regard to interest and, in the case of real estate, payment by instalments.

The fact that the first life interest goes to the widow or husband of the deceased does not entitle the accountable parties to postpone payment of the duty until his or her death.

In the case of reversionary property, payment of Settlement Estate Duty may be made in the same way as Estate Duty, *i.e.* at once on the value of the reversion

[1] Under F. A. 1898, s. 14.

[2] F. A. 1894, s. 21 (4).

or postponed until the property falls into possession and the accountable parties should therefore elect. Where, however, it is decided to postpone payment of Estate Duty on a reversionary interest the payment of Settlement Estate Duty must also be postponed, and *vice versâ*.

Where the deceased dies domiciled abroad and his estate is settled, Settlement Estate Duty is only chargeable on the English assets, and where a legacy is settled, Settlement Estate Duty is only chargeable in respect thereof so far as it is paid or payable out of English assets. If it is directed by the will to be paid out of the foreign assets, Settlement Estate Duty would not be chargeable at all. Where the domicil is in the United Kingdom, foreign personal estate, if settled, would be liable to Settlement Estate Duty equally with the rest of the settled estate.

Where the deceased by way of gift within three years of his death settled property so that on his death it stands limited to or in trust for persons by way of succession and Estate Duty is payable, Settlement Estate Duty is also chargeable[1] unless the only life interest were that of the deceased's wife, or unless the settlement were a gift made by the deceased in consideration of marriage, in which case, as has been explained, it is exempt from Estate Duty.

Where property is settled, and the life tenant before receiving any part of the income disclaims his interest, Settlement Estate Duty is not chargeable.

Where property is given to two or more persons for their lives and the lives or life of the survivors or survivor with an absolute gift to the survivor, one share may be deducted as it must be the absolute

[1] Attorney-General *v.* Milne, [1913] 1 K. B. 337, *sed qu.* This case is still *sub judice.*

property of one of the life tenants and is not therefore chargeable with Settlement Estate Duty. So also, where a fund is given to a person for life with power at any time to require payment of the fund or part of it to him, Settlement Estate Duty is not chargeable on the fund or the part of it subject to such power. Estate Duty would, of course, be payable on the death of a person having such a power.[1]

Persons Accountable.—The persons accountable for Settlement Estate Duty are the executors or trustees in whom the property is vested upon trust. It differs from Estate Duty in that it is a charge on, and payable out of, the property in respect of which it is payable,[2] whether personal or real estate, whereas Estate Duty, as already shown, is not a charge on personal estate which passes to the deceased's executor as such. Where, however, the settlement is of specific property by will and there is an express direction to the contrary,[3] settled property would be free from such a charge and the Settlement Estate Duty would be payable out of the residue. Thus where a settled legacy is given "free of duty" or "free of Settlement Estate Duty," the Settlement Estate Duty would fall on the residuary estate. But if the legacy were liable to Legacy Duty, Settlement Estate Duty could be deducted in the Legacy Duty account as well as in the residuary account, as the direction is considered to be a further benefit not taxable with Legacy Duty. The Settlement Estate Duty is also payable out of residue where an annuity is given "free of duty" or "free of Settlement

[1] F. A. 1894, s. 2 (1) (*a*). [2] F. A. 1896, s. 19 (1).

[3] *Re* Leveridge; Spain *v.* Lejoindre, [1901] 2 Ch. 830; *re* King; Travers *v.* Kelly, [1904] 1 Ch. 363; *re* Dyet; Morgan *v.* Dyet, 87 L. T. 744; *re* Cayley; Awdry *v.* Cayley, [1904] 2 Ch. 781; *re* Maryon Wilson; Wilson *v.* Maryon Wilson, [1900] 1 Ch. 565; Dundas's Trustees *v.* Dundas's Trustees, [1912] S. S. C. 375.

Estate Duty" or where the expression is "a clear annual sum" or the annuity is directed to be paid "without any deduction."[1] If, however, a *corpus* sufficient to produce the annuity is deducted in the residuary account, the deduction in respect of Settlement Estate Duty should in strictness be limited to the proportion of duty attributable to the *value* of the annuity as it is only the annuity that is given free and not the *corpus* sufficient to produce it.

Subject as above, Settlement Estate Duty, not being a testamentary expense, must be borne by the settled legacy and not by the residuary estate.

The account for payment of duty is required to be delivered within six months after the death or such further time as the Commissioners allow.[2]

### Exemptions.

1. Property which is not liable to Estate Duty (see "Exemptions from Estate Duty") is also exempt from Settlement Estate Duty. The latter duty is a further Estate Duty and cannot be payable where Estate Duty itself is not chargeable. Where, therefore, a person settles property within three years of his death in consideration of marriage, so that such disposition is exempt from Estate Duty[3] it is also exempt from Settlement Estate Duty, though the property passes under a settlement to a person not competent to dispose.

2. Where the net value of the property in respect of which Estate Duty is payable, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1000, Settlement Estate Duty is not

[1] See the Cases in note [3], page 136.
[2] See F. A. 1896, s. 19 (2).
[3] F. A. 1910, s. 59 (2).

payable under the deceased's will.[1] (As to what property is comprised in the estate not exceeding £1000 see page 74). The result is that on payment of Estate Duty such an estate is freed from all other duties. The exemption does not apply to property settled otherwise than by will of the deceased, and therefore where property passes under some other disposition (which has taken effect since The Finance Act, 1894) to a person not competent to dispose, Settlement Estate Duty would be chargeable even though the value were under £1000.

3. Land or chattels settled by Act of Parliament or royal grant so that none of the possessors can alienate.[2]

4. Property given upon trust to a charity, an ecclesiastical body, or corporation.

5. Where Settlement Estate Duty has once been paid under a settlement it is not again payable on subsequent deaths of limited owners.[3]

6. Settlement Estate Duty is not payable under dispositions taking effect before The Finance Act, 1894.[4]

7. Settlement Estate Duty is not payable where the *only* life interest is that of the husband or wife of the deceased.[5]

[1] F. A. 1894, s. 16 (3).
[2] F. A. 1894, s. 5 (5).
[3] F. A. 1894, s. 5 (1) (*b*).
[4] F. A. 1894, s. 21 (4).
[5] F. A. 1894, s. 5 (1) (*a*).

# CHAPTER VI.

## ESTATE DUTY.—PRACTICE.

ON a death taking place, it is first necessary to prove the will, or, in the case of an intestacy, to take out letters of administration in order that the deceased's representatives may obtain control of the estate.

For this purpose an inventory (known as the Inland Revenue Affidavit)[1] of the value of the estate is required. The forms in use, which vary according to the amount of the estate and the existence or not of settled property, are as follows:—

"B–2."—Inland Revenue Affidavit for Probate or Administration: To be used where there is *no* settled property (not being property over which the deceased had and exercised by will a general power of appointment, or property which, by default of exercise of the power of appointment, belonged to the deceased absolutely), and the *gross* principal value of the free and other unsettled property, real and personal, in respect of which Estate Duty is leviable on the death of the deceased does not exceed £500 (except where the *gross* value exceeds £100 but the *net* value does not exceed £100), *and*, if any Estate Duty is payable thereon, it is desired to pay the fixed duty of 30s. or 50s.

NOTE.—Where in the circumstances of the case the *ad valorem* Estate Duty in respect of the net estate is less than the fixed duty, and it is desired to pay the smaller duty, the Form "A–7," "A–4," or "A–6," whichever is appropriate, should be used, and not the Form "B–2" or "B–4."

[1] F. A. 1894, s. 22 (1) (*n*).

"B–4."—Inland Revenue Affidavit for Probate or Administration: To be used instead of the Form "B–2," where there *is* settled property (not being property over which the deceased had and exercised by will a general power of appointment, or property which, by default of exercise of the power of appointment, belonged to the deceased absolutely) in addition.

No. 27.—Summary of Duty and Interest: to accompany Form "B–4."

"A–4."—Inland Revenue Affidavit for Probate or Administration: To be used where the property in respect of which Estate Duty is leviable consists EXCLUSIVELY of *free* personal property situate in the United Kingdom, under the deceased's will or intestacy; *except* where the Form "B–2" is applicable.

No. 16.—Summary of Duty and Interest: to accompany Form "A–4."

"A–6."—Inland Revenue Affidavit for Probate or Administration: To be used where the property in respect of which Estate Duty is leviable consists EXCLUSIVELY of *free* personal and real property situate in the United Kingdom, under the deceased's will or intestacy, except where the Form "B–2" is applicable.

No. 17.—Summary of Duty and Interest: to accompany Form "A–6."

"A–7."—Inland Revenue Affidavit for Probate or Administration: To be used where Form "B–2," "B–4," "A–4," "A–6," "Y–1," or "Z–1," is not applicable.

No. 28.—Summary of Duty and Interest: to accompany Form "A–7."

"Y–1."—Inland Revenue Affidavit for Probate or Administration: To be used where the deceased died domiciled abroad, and no property situate in the United Kingdom passed at his death within the meaning of The Finance Acts, 1894 to 1912, but a grant is required in respect of assets which have since been transmitted to this country.

"Z–1."—Inland Revenue Affidavit: To be used where no property chargeable with Estate Duty passed on the death of the deceased, and the grant is solely in respect of property of which the deceased was trustee only.

"A–5."—Inland Revenue Affidavit: To be used where a second or subsequent grant is required in respect of property which was within the operation of a previous grant. Where it was not so, the same form should be used as for an original grant.

No. 22.—For small estates under £100 in net value, where money is deposited in a savings bank or is due from a friendly society, and a certificate of exemption from duty is required to obtain payment of the money, no formal grant of representation to the deceased being necessary.

Having ascertained the proper form, particulars should be given in detail showing the principal value of the estate, *i.e.* the price which, in the opinion of the Commissioners, the property would fetch if sold in the open market at the time of the deceased's death.[1] Such value is to be ascertained by the Commissioners in such manner and by such means as they think fit.[2] In the first

[1] F. A. 1894, s. 7 (5).

[2] F. A. 1894, s. 7 (8).

instance, however, the value should be ascertained by the accountable parties, either by estimating it themselves or with professional assistance. In all cases full details should be given, showing the basis of valuation. If the Commissioners are not satisfied with the value so obtained they may appoint their own valuer, and in such cases the cost is borne by them,[1] but not where they merely call for a professional valuation.

Where the property has actually been sold within a short time after the death of the deceased the gross sum realised may generally be taken as the principal value, but no deduction should be made for expenses of sale such as solicitors' or auctioneers' charges, printing, or advertising. If, however, money has been spent on the property since the death other than for ordinary expenses of upkeep so as to render it fit for sale or to realise a larger price, allowance might in certain cases be claimed.

As has been shown, where the deceased was a considerable owner of particular property no reduction is to be made on the ground that the market would be depressed if the whole property were placed on the market at once, but if the death of the deceased has caused a depreciation in the value the Commissioners are required to take such depreciation into account.[2]

The above remarks apply generally to property the value of which is not at once ascertainable, but it will be convenient to consider in detail a few of the more frequently recurring species of property.

*1. Stocks and Shares.* The values should be based on the closing prices of the Official Daily List of the London Stock Exchange. Where, however, the securities

[1] F. A. 1894, s. 7 (9). [2] F. A. 1910, s. 60 (2).

are not officially quoted, the values should be evidenced by—(A) Letters from the secretaries of the companies or corporations certifying the values on the date of the deceased's death. These estimates are based on the prices at which, at or about the date of death, transfers have been registered. (B) Published quotations indicating the values at the date of death, such as local share lists or quotations published in local or financial papers or share lists issued by the exchanges of provincial towns, or (C) Certificates as to value furnished by a qualified broker acquainted with the securities in question.

In the case of private companies where there have been no recent transfers on sale and the market is restricted,[1] it may also be necessary to produce the Memorandum and Articles of Association and recent balance sheets for consideration by the Commissioners. The principal value is the price which, in the opinion of the Commissioners of Inland Revenue, the shares would fetch if sold in the open market on the terms that the purchaser should be entitled to be registered as the holder of the shares.[2]

Quoted prices of stocks or shares generally show a higher and a lower closing price, the former being in effect the price which a purchaser would have to pay and the latter the price a vendor would get if he sold. The value for Estate Duty is ascertainable by taking the lower closing price and adding to if one fourth of the difference between it and the higher price. For instance: if stock was quoted on the day of death at 96-98, the value on which Estate Duty is payable would be $96 + \frac{98-96}{4} = 96\frac{1}{2}$.

[1] See *re* Henry Jameson, deceased; Attorney-General *v.* Jameson and Others, [1905] 2 I. R. 218. [2] *Ibid.*

Where the death occurs on a Sunday or other day on which no quotations are issued, the price on the day preceding should be taken.

Where the price does not include the dividend or, in other words, the quotation is "ex. div.," the forthcoming dividend must be separately accounted for. Generally, however, the quotation is "cum. div." and thus the dividend is included in the price and should not be separately accounted for nor should it be apportioned to the date of death.

As the values of stocks and shares on the date of death, ascertainable as above, can be fixed once and for all, any subsequent rise or fall, however great, is immaterial and will not give rise to any claim for further duty or for a return of duty. Where, however, securities are not quoted and their value at the date of death cannot be accurately determined owing to special circumstances, such as the speculative nature of the undertaking or the absence of any dealings in them (as in the case of private companies), a claim for readjustment of the duty paid may arise if within a reasonable time of the death it is possible, owing to a sale or other circumstances, to determine their value with greater precision.

*2. Policies of Assurance.* The amount received from the assurance company, including bonuses, should be accounted for. In the case of a policy on the life of another person the saleable value at the deceased's death should be accounted for. This is not necessarily the same as the surrender value. The latter value is what the company would pay for a surrender of the policy and is based on the assumption that the assured is in good health. It frequently happens that the saleable value is higher, and to ascertain the true market

value a valuation by an actuary or other independent person may be necessary. The market value of the policy may be accounted for even though between the date of death and date of lodging the Inland Revenue affidavit the assured person has died.

*3. Furniture, household goods, stock-in-trade, farming stock, and outdoor effects* can in general be estimated with sufficient accuracy, but where the value is considerable a detailed professional valuation is necessary. Should the deceased possess pictures by artists of repute or articles of furniture having a special value, detailed particulars should be supplied, giving a separate value for each article and the name of the artist or creator. The Commissioners may in such cases employ their own art expert to inspect and report to them as to the value. In the case of chattels in respect of which it is intended to apply for a remission of duty,[1] a separate schedule giving full details and a separate value for each item should be supplied. The estimate of farming stock should include the deceased's tenant right such as unexhausted improvements, growing crops, &c.

*4. Assets of the deceased's business or profession.* Where the deceased was in partnership a balance sheet signed by the surviving partner or partners is necessary, showing the value of the deceased's share. This value is the real value of the share and not necessarily that at which the surviving partners have power to take over the share. The partnership deed or the draft or a copy thereof should in all cases be forwarded to the Commissioners for perusal. In ascertaining the value of the deceased's business or his share in a business the goodwill should be taken into account where the

[1] Under F. A. 1894, s. 15 (2), or F. A. 1896, s. 20, as amended by F. A. 1910, s. 63.

business carries goodwill. This value can in general be estimated by taking so many years' purchase, according to the circumstances of each case or the custom of the trade, of the net profits of the business. Where, however, the share of a deceased partner is to be ascertained from the last annual balance sheet of the partnership and the partnership deed does not make any provision for goodwill, it may be that nothing need be brought into account for Estate Duty in respect of goodwill,[1] as the executors of the deceased partner are not entitled to receive anything in respect of it.

Where the business has goodwill attached to it the basis upon which the estimate of value is calculated should be given.

The gross amount of the book debts of a business should in all cases be given and the amount deducted for bad and doubtful debts should be shown.

*5. Ships and shares in ships.* A detailed valuation should in all cases be supplied.

*6. Interests in expectancy.* The parties have to decide whether they will pay duty at once or postpone payment until the property falls into possession. In the former case they pay duty on the value of the reversionary interest. In the latter case they pay duty on the value of the property at the time it falls into possession.[2] They may elect at any time before a grant of representation has been taken out, even though the reversion may in the meantime have fallen into possession. But after the grant is obtained, if they wish to

[1] Attorney-General *v.* Boden, [1912] 1 K. B. 539.

[2] F. A. 1894, s. 7 (6), and *re* Colonel Eyre, deceased, [1907] 1 K. B. 331.

pay duty before the reversion falls in it can only be done by way of commutation, as follows:—Application should be made to the Commissioners to commute the duty, and this will generally be agreed to if the life tenant is in ordinarily good health and the circumstances render it desirable to commute.[1] The duty is assessed on the value of the property as if it were in possession and discounted at £3 per cent. for the life of the life tenant. If the reversion may fall in on other contingencies than death the allowance in respect of the life interest would be reduced.

Whether the option to defer payment of duty on an interest in expectancy is exercised or not it is necessary to determine its value at the date of death for the purpose of ascertaining the correct rate of duty on the property in possession. In general, the value can be estimated by deducting from the principal value of the property at the date of death the value of the life interest. Thus: suppose the deceased were entitled to a sum of £1000 on the death of A., aged sixty, who survives him; £4 per cent. interest on £1000 is £40 which represents the average income. The value of £40, for a life aged sixty, according to the tables in the Succession Duty Act, is £388 16s. 4d. Deduct this sum from £1000 and the balance, £611 3s. 8d., represents the value of the reversionary interest.

Instead of calculating interest at £4 per cent. the average net annual income (without deduction for Income Tax) receivable by the life tenant may in the case of ordinary trust investments be taken and its value for the life of the life tenant deducted from the principal value of the property.

[1] F. A. 1894, s. 12.

Where the reversion is of considerable value or is dependent upon contingencies which may or may not happen, or where from any other circumstances it is difficult to arrive at its true value, a valuation by an actuary may be necessary. In these cases the basis of the actuarial calculation should in all cases be shown. In practice, actuarial calculations up to £2000 are generally accepted, but the Commissioners may question them and in cases of valuations above that sum the question of value would be submitted to the Official Actuary. In the case of contingent reversions, *i.e.* interests which may never fall into possession, it is not sufficient to account for a merely nominal sum. A fair value, having regard to all the circumstances, must be accounted for.[1]

If the reversion is expectant on the joint lives or on the death of the longest liver of two or more persons, the amount which may be deducted may be calculated in a similar way by means of the Succession Duty Act tables. It should be noticed that these tables are based upon a £4 per cent. rate of interest.

If the rest of the estate does not exceed £1000 it can be treated as an estate by itself,[2] as the reversion is regarded as property settled otherwise than by the will of the deceased: thus—

| | £ | s. | d. |
|---|---|---|---|
| Free estate ... ... ... ... | 800 | 0 | 0 |
| Reversion—value at death ... ... | 300 | 0 | 0 |
| Property passing under marriage settlement ... ... ... ... | 4800 | 0 | 0 |

[1] Lord Advocate *v.* Pringle, 5 S. S. C. 4th series, 912.
[2] F A. 1894, s. 16 (3).

The free estate forms an estate by itself and is not aggregable, and the rate is £2 per cent. Settlement Estate Duty, Legacy Duty, and Succession Duty are not payable.

The reversion is aggregable with the settlement property, and the total being over £5000 duty is payable on it and on the settlement property at £4 per cent.

If the free estate and the reversion together do not exceed £1000, it is open to the accountable parties to treat them as together forming the "estate by itself." The estate so constituted would be exempted from aggregation and from any other duties.

*7. Foreign property.* The value should be calculated at the rate of exchange at the date of death and included in Account 2 of the Inland Revenue affidavit. Deduction may be taken in Schedule 2 for foreign debts and foreign duty and extra expense of administration, if incurred, not exceeding £5 per cent.[1]

If the assets are in a British Possession where reciprocal benefits are granted to English assets and the fact has been certified by Order in Council,[2] the assets should be brought into Account 2, as in the case of foreign assets, at their gross value, deducting any debts payable thereout and extra expenses of administration not exceeding £5 per cent., if incurred. A certificate from the Colonial Court, certifying the amount of the duty paid there[3] and giving particulars of the assets on which duty was paid should also be furnished. In the case of Indian assets or other currency not in pounds sterling the amount paid should

[1] F. A. 1894, s. 7 (3) & (4). [2] F. A. 1894, s. 20.

[3] Particulars of the duties payable in British Possessions are given in *Hanson's Death Duties*, 6th edition, page 859.

be expressed in English currency at the rate of exchange on the date of payment. The Colonial duty will then be allowed against the Estate Duty, but only to the extent of the Estate Duty paid on the Colonial assets, so that if the Estate Duty is less than the Colonial duty the balance cannot be allowed except against any Settlement Estate Duty which may be payable on the Colonial assets. Although the Estate Duty may be balanced by the Colonial duty, the value of the Colonial assets is still aggregable with the rest of the estate for the purposes of rate. If the duty on the Colonial assets covers income since the death (as, for instance, income up to the date when the Colonial grant was obtained), the Colonial duty on such income is not allowable. If the certificate is not available when the Inland Revenue affidavit is lodged, a corrective affidavit claiming the allowance should be brought in subsequently.

A somewhat similar practice prevails as to Court fees paid at British Consular Courts having extra-territorial jurisdiction in respect of moveable assets within the jurisdiction of such Courts, in connection with grants of representation. Application should be made by corrective affidavit accompanied by a certificate from the Consular Court vouching the payment of the Consular fee in respect of assets which are within the jurisdiction of that Court and are included in the Inland Revenue affidavit.

Where an Order in Council has not been passed with regard to any British Possession, the duty paid there can only be allowed against the value of the property and not against the Estate Duty thereon.

Orders in Council have been applied to the following British Possessions:—South Australia, West Australia, Bahamas, Barbados, Bermudas, British Columbia, British

Guiana, Ceylon, Falkland Islands, Fiji, Gambia, Gibraltar, Gold Coast, Grenada, Hong Kong, India (not including feudatory native States), Jamaica, Labuan, Lagos, Leeward Islands, Manitoba, Natal, New Brunswick, Newfoundland, New South Wales, New Zealand, Nova Scotia, Ontario, Quebec, Sierra Leone, Straits Settlements, Tasmania, Trinidad, Tobago, Victoria, and the Yukon Territory (Dominion of Canada).

8. *Freehold and leasehold property.* A form of schedule indicating the particulars required is supplied with the Inland Revenue affidavit. The value may be estimated by taking so many years' purchase of the net annual value. To arrive at the latter the gross rental if let, or the gross property tax assessment if unlet or occupied by the deceased, should be taken and from it deducted the annual outgoings paid by the owner: viz. repairs, insurance premium, tithe rent charge, land tax, chief rent, or ground rent in case of leasehold property, and any other permanent annual outgoings not including property tax. Where the property was occupied by the deceased or is unoccupied the value is based on the *gross* property tax assessment and not the assessment as reduced for collection. The outgoings deductible are only those paid by the landlord, so that if rates and repairs are paid by the tenant they should not be deducted. The amount deductible for repairs depends upon the class and condition of the property, and the following are given as a rough guide to the allowance that may be appropriate in ordinary cases:—

Ordinary house property: an average of £10 per cent. of the gross rental;

Cottage or tenement: an average of £10 to £15 per cent. of the gross rental;

Agricultural property: an average of £5 to £7 10s. per cent. of the gross rental.

The number of years' purchase of the net annual value representing the market value of the property of course varies according to the locality of the property, its tenure (whether leasehold, freehold, or copyhold), its state of repair, and the class of house upon it. Rough averages are as follows:—

Ordinary house property: fifteen to twenty years' purchase;

Agricultural property: about twenty-five years' purchase;

Cottage property, tenement property, copyhold house property, and leasehold property with less than fifty years of the lease to run: ten to fifteen years' purchase;

Shop property and good class residential property: twenty years or more.

For leaseholds of short terms a less number of years may be appropriate, or, if there is a heavy contingent liability for dilapidations at the end of the term, the property may be a burden to the estate.[1]

Formerly, the value of purely agricultural property was limited to twenty-five years' purchase of the gross assessment to the property tax after deducting repairs &c. and expenses of management not exceeding £5 per cent.[2] This provision was, however, abolished by The Finance Act, 1910, and Estate Duty is now payable on the full

[1] As to ascertaining the value of licensed property, see *ex parte* Ashby's Cobham Brewery Company, Limited, *re* "The Crown," Cobham, and *ex parte* Ashby's Staines Brewery Company, Limited, *re* "The Hand and Spear," Woking, [1906] 2 K. B. 754, 95 L. T. 260.

[2] See proviso to F. A. 1894, s. 7 (5).

market value[1]; except that where agricultural property includes labourers' cottages, which have a special value as country cottages for townspeople and others, no account is to be taken of any such additional value.[2]

When real and leasehold property come before the Estate Duty Office the question of value is referred to the Valuation Branch for an expression of opinion. The value is then gone into by the Government valuers who, if not satisfied, communicate direct with the accountable parties or their representatives. On determination of the value a report is sent to the Estate Duty Office and a statement, prepared in the office, of any further duty payable on any increase or of any duty returnable on any decrease, is sent to the accountable parties without the necessity for them to render a corrective affidavit. Should the amended value not have been agreed to, the parties are entitled to appeal within thirty days in accordance with the provisions of The Finance Act, 1910.

The deceased's estate should include all arrears of income up to his death and an apportionment of unpaid income up to the same date.[3] Therefore, besides arrears, an apportionment of rents, mortgage interest, income from property of which he was the life tenant, pensions, annuities, director's fees, profits of business, &c., should be included in the affidavit.[4]

After specifying the assets, deduction may be taken for debts due from the deceased and for funeral expenses.

The debts must have been created by the deceased for full consideration in money or money's worth and for his sole benefit and for which he alone is liable.[5]

[1] F. A. 1910, s. 60 (1).
[2] F. A. 1911, s. 18.
[3] See Apportionment Act, 1870.
[4] F. A. 1894, s. 6 (5).
[5] F. A. 1894, s. 7 (1).

Voluntary debts, *i.e.* debts created for some other consideration than money, are not deductible,[1] nor guarantee debts, unless the estate is called upon to pay and repayment cannot be obtained from the principal debtor. Where the estate may be liable for future rent under a tenancy agreement, or for dilapidations under a lease or, in the case of a clergyman, for dilapidations to the rectory or vicarage, no deduction should be taken until the actual amount of liability is ascertained and paid; and it may be necessary to make a claim for return of duty on these grounds by corrective affidavit after the grant of representation has been obtained. Rent due after the death can only be allowed if the tenancy created by the deceased cannot be got rid of or the house sublet. If the deceased's family continues to occupy the house after his death under the tenancy created by the deceased no allowance can be claimed, as the payment of rent after the death is for their benefit. But if the house cannot be let and the landlord accepts a surrender of the tenancy on payment of a lump sum, such sum may be deducted as well as rent up to the date of surrender.

Where the deceased has bound himself for consideration in money or money's worth to pay an annual sum to another person, deduction may be taken of the value of such sum according to the tables in the Succession Duty Act. Where, however, the liability was voluntary, no deduction may be taken.[2]

Similarly, if the real estate is subject to an annuity created for full consideration in money or money's worth, deduction may be taken for the value according to the tables. Where the property passes under a

[1] Lord Advocate *v.* Gunning's Trustees, [1902] 39 S. L. R. 534, and *re* Gray; Gray *v.* Gray, [1896] 1 Ch. 620. [2] F. A. 1894, s. 7 (1) (*a*).

settlement subject to an annuity not created by the deceased and voluntary in its inception, the proper deduction would seemingly be "a slice" of the property sufficient to produce the annuity. Further Estate Duty would then be payable in respect of such slice on the death of the annuitant. If, however, the property when settled was subject to an annuity or rent charge created by an earlier title, the proper deduction would be the value according to the tables.

Mortgage debts, whether ancestral or created by the deceased or by a life tenant and reversioner together, may be deducted as well as an apportionment of interest up to the death.

In the case of small estates not exceeding £500 gross where the fixed duties are paid, mortgages and encumbrances on real estate and leasehold can only be deducted[1]—

(A) If created by a predecessor in title to the deceased.

(B) If created by the deceased for the purpose of purchasing the property.[2]

If the property includes timber a separate value is placed upon the latter, but Estate Duty is not paid thereon and it is not taken into account for the purposes of rate. But on sales taking place Estate Duty should be accounted for on the net proceeds of sale from time to time received.

Funeral expenses should be of reasonable amount, having regard to the position of the deceased and the size of the estate; and in certain cases expenses of mourning, though not strictly funeral expenses, might be allowed.

[1] F. A. 1894, s. 16 (1). [2] F. A. 1910, s. 61 (2).

Where further assets are discovered or it is found that assets were wrongly included in the original affidavit or the amount or values were incorrect, a corrective affidavit should be rendered on *Form D–1* to adjust the duty.[1] Where it is for additional duty it should be rendered in duplicate, one copy being signed by the executors, but it need not be sworn to in the first instance unless entirely new assets are accounted for. If it is for return of duty it need not be rendered in duplicate but should be signed and sworn to by all the executors. In return of duty cases, the interest actually paid on the duty returnable is allowed, but not interest for the time the money has been in the hands of the Crown. The Crown is not in fact chargeable with interest unless the over-payment was due to an over-valuation by the Commissioners[2] or interest is allowed by the Court.[3]

It should be noticed that Estate Duty must be paid on the Inland Revenue affidavit on the deceased's personal estate. Estate Duty may also be paid on the affidavit on his real estate, gifts *inter vivos*, and on settled property,[4] but if it is not so paid then a separate account on *Form C–1* in duplicate should be rendered. The account should be duly signed and sworn to by the accountable parties who, in the case of real estate, specifically devised, are the devisees, and in the case of settled property are the trustees in whom it is vested. The value in the case of a gift *inter vivos* should be ascertained as at the date of death. If the donee has sold in the lifetime of the deceased, duty would apparently be payable on the proceeds of the sale.

[1] F. A. 1894, s. 8 (7) & (12).
[2] F. A. 1894, s. 8 (12).
[3] F. A. 1894, s. 10 (3).
[4] F. A. 1894, s. 6 (2).

Where the duty on real estate is being paid by instalments, *Form C–3* (not in duplicate) should be used for the second and subsequent instalments.

Should any correction of an account be necessary (as where further assets are recovered or the value was over-stated), a corrective account on *Form D–2* should be rendered on similar conditions to *Form D–1*. Where it is for return of duty it should in all cases be accompanied by the stamped and receipted account on which duty was originally paid.

Where Estate Duty is payable on the cesser of an interest, if the interest extends to the whole income of the property Estate Duty is payable on the principal value of that property.[1] Thus, if under the will of A., who died before The Finance Act, 1894, B., who dies in 1910, is entitled to an annuity of £50 charged on a piece of land worth £1500 and the income is less than £50, Estate Duty is payable on B.'s death on the full £1500.

If, however, the interest is less than the whole income, Estate Duty is payable on the "slice" of the property sufficient to produce the income to which the interest extended.[2] Thus if in the above instance the income of the land were £75, the "slice" sufficient to produce £50 per annum would be $\frac{50}{75} \times 1500 = £1000$.

In the case of an annuity provided by the deceased and arising on his death, the value for Estate Duty may be calculated from the tables in the Succession Duty Act, taking the complete age of the annuitant at death. The duty in such case may be paid by four equal yearly instalments, the first payable one year after death, interest on the unpaid duty from that date

[1] F. A. 1894, s. 7 (7) (*a*).

[2] F. A. 1894, s. 7 (7) (*b*); *re* Parker-Jervis; Salt *v.* Locker, [1898] 2 Ch. 643, and Lord Advocate *v.* Henderson's Trustees, [1905] 42 S. L. R. 720.

being charged.[1] It should be noted that the above tables are based on a £4 per cent. rate of interest and an average expectancy of life. They may not therefore be suitable for ascertaining the principal value in special cases.

Settlement Estate Duty should be accounted for on *Form C–2* in duplicate, one copy being signed and sworn to by the executors or trustees. As the duty is a further Estate Duty[2] the account should be based upon the values given in the Inland Revenue affidavit.

Thus, suppose the residue of an estate of £30,000 gross personal estate and £4000 real estate is settled, the account should be prepared as follows :—

| | £ s. d. | £ s. d. |
|---|---|---|
| Net personal estate as per Inland Revenue affidavit, after deducting debts £400 and funeral expenses £60 | | 29,540 0 0 |
| *Less*— | | |
| Estate Duty (interest on Estate Duty should not be deducted) ... ... | 1,772 8 0 | |
| Costs and executorship expenses ... ... ... | 300 0 0 | |
| Legacies ... ... ... | 5,000 0 0 | |
| Duty thereon, if there is a direction in the will that they are to be free of duty, say at £5 per cent. | 250 0 0 | |
| Specific bequest of furniture | 80 0 0 | |
| | | 7,402 8 0 |
| Residuary personal estate on which Settlement Estate Duty is payable ... | | £22,137 12 0 |

[1] F. A. 1896, s. 16.

[2] F. A. 1894, s. 5 (1) *a*).

| | | £ s. d. |
|---|---|---|
| Real estate ... ... | | 4,000 0 0 |
| *Less*— | | |
| Specific devise ... ... | 500 0 0 | |
| Estate Duty on £3500 ... | 210 0 0 | |
| | | 710 0 0 |
| Residuary real estate on which Settlement Estate Duty is payable ... ... | | £3,290 0 0 |

The Settlement Estate Duty in such a case would be charged at £2 per cent. on £22,137 12s., with interest from the date of death and on £3290 without interest if paid within a year of death. The personal estate and real estate should always be kept distinct, and in practice the only deduction to be taken against settled real estate is its own Estate Duty and, of course, any mortgages to which it may be subject.

The Settlement Estate Duty on the real estate may be paid at the option of the accountable parties in full or by the same instalments and in the same manner as Estate Duty on real estate. If it is paid by instalments *Form C–3* should be used for the second and subsequent instalments, as for Estate Duty. If the Estate Duty is paid in full the Settlement Estate Duty should also be paid in full.

Should it be necessary to correct the Settlement Estate Duty or to apply for return of the duty under a contingent settlement where the contingency has failed, *Form D 2* should be used in the same manner and under the same conditions as for Estate Duty.

Should Settlement Estate Duty be payable on an annuity and capital is directed to be set apart, duty is charged on the sum set apart, taking its value at the date of death. If no sum has been set apart duty is

charged on a proportionate part of the estate sufficient to produce the annuity. Thus suppose Settlement Estate Duty is chargeable on an annuity of £50 directed to be paid out of the income of a residuary estate value £20,000 and producing £750 per annum, Settlement Estate Duty is chargeable on $\frac{50}{750} \times 20{,}000 =$ £1333 6s. 8d. If, however, the income is not readily ascertainable, Settlement Estate Duty may sometimes by arrangement with the Commissioners be accounted for on a notional capital sufficient at—say, £3 10s. per cent., to produce the annuity, *i.e.* £1428 11s. 5d.

It may be desirable to commute Estate Duty presumptively payable on settled property on the death of a life tenant.[1] In such cases, application should first be made to the Commissioners, setting forth the facts fully and stating how the property or the proceeds of sale if sold are being dealt with. In general, where property is being taken out of settlement, the duty to be commuted will be Succession Duty and not Estate Duty. Where Estate Duty is to be commuted *Form No. 20* in duplicate, which is forwarded by the Estate Duty Office when agreeing to commute, should be used. It should show the market value of the property at the time. If there has been a sale the gross proceeds of sale should be accounted for. If, however, the sale is of the reversionary interest expectant on the death of the life tenant it is not sufficient to include the proceeds of the sale. The value of the property itself as in possession should be accounted for. The duty is calculated on the value in possession and is then discounted for the life of the life tenant. Thus suppose the value in possession were £4000 and the age of the life tenant sixty-two: the rate of duty

[1] F. A. 1894, s. 12.

would be £3 per cent. and the amount £120. The discounted value of £120 expectantly payable on the death of a person aged sixty-two is £84 9s. and this is the sum payable by the accountable parties. It should be paid within twenty-one days or a re-calculation may be necessary.

It will be noted that the rate of duty is ascertained by reference to the value of the property in possession. If, however, there is other property settled by the same instrument which will presumptively pass on the same death, the value of such property is aggregable with the property on which duty is being commuted and it may therefore increase the rate of duty. Where also there have been previous commutations of Estate Duty the values must be taken into account for aggregation purposes. But subject to this, no account for aggregation purposes is taken of other property, such as the life tenant's free estate or property settled by other instruments, which may pass when he dies.

Where the life interest may determine on other contingencies than death the allowance in respect of the life interest is reduced and in the case of a life tenant whose interest is for life or until re-marriage, the allowance is reduced as follows:—

Where the age of the life tenant exceeds

| | | | | | | |
|---|---|---|---|---|---|---|
| 20 | and does not exceed | | 30, | allowance reduced by | | one half |
| 30 | ,, | ,, | 40 | ,, | ,, | one third |
| 40 | ,, | ,, | 50 | ,, | ,, | one fourth |
| 50 | ,, | ,, | 60 | ,, | ,, | one sixth |
| 60 | ,, | ,, | 70 | ,, | ,, | one eighth |
| 70 | | | | | | — |

Application for a certificate discharging the property from Estate Duty must be made by or with the authority of the person who accounted for the duty.[1] It should be made on *Form 25* in duplicate, which should contain a description of the property sufficient to identify it in the Inland Revenue affidavits or accounts and particulars of any sales. If a sale of any unsold property is contemplated the application should be postponed until the amount of the sale moneys can be stated. If no sale is contemplated the fact should be stated. If Settlement Estate Duty is payable it should be paid before the application is made, as it is a further Estate Duty. The certificate of discharge is usually required for production to the purchaser when real estate has been sold.

Applications for other certificates of payment of duty should be made on the following forms:—

*No. 080.*—For certificate under The Finance Act, 1894, Section 9 (2).

*No. 0500.*—For certificate under The Land Transfer Act, 1897.

*No. 0532.*—For certificate under The Finance Act, 1894, Section 11 (2).

*No. 32.*—For certificate to lead to payment out of funds in Court.

Where, owing to the death of an administrator or the death intestate of a sole executor or for any other reason the original grant of representation becomes inoperative, and a further grant is required, application should be made in the first instance to the Estate Duty Office for a certificate that duty has been paid. It should be made by memorial, and instructions with

[1] F. A. 1894, s. 11 (1).

a model form of memorial can be obtained from the Estate Duty Office. The memorial should be accompanied by an Inland Revenue affidavit on *Form A 5* duly completed. If the application is in order the *Form A 5* is returned with a certificate as to payment of duty duly signed and is then ready for presentation to the Probate Registry in the ordinary course.

The Estate Duty forms can be obtained from the Estate Duty Office, Somerset House, London, W.C., and (except as to those forms not so frequently in use) from any money order post-office outside the Metropolitan Postal District, and the following post-offices within that district: viz.—Throgmorton Avenue, E.C.; Aldgate, E.; High Street, Camden Town, N.W.; 17 Walworth Road, S.E.; and Earl's Court (near the Railway Station).

Payment of the duty when assessed may be made personally at the Accountant-General's Department, Somerset House, or by post to the Accountant-General.

The fixed duties of £1 10s. and £2 10s. are payable by means of an adhesive stamp, which should be affixed to the first page of the Inland Revenue affidavit. The stamps may be obtained at any post-office or at the office of any distributor of stamps.

Accounts and corrective affidavits may be sent by post or, if desired, may be left by hand at the Estate Duty Office. They are then examined and instructions sent by post as to the amount of duty payable and the mode of payment. Personal attendance is not necessary, but in suitable cases an appointment can be arranged.

# PART II.

## LEGACY DUTY.

THIS duty is a tax upon *personal* property under wills or intestacies.

It was first imposed in 1780,[1] but its scope has since been extended and it is now mainly regulated by The Legacy Duty Act, 1796.[2]

The rates of duty were formerly graduated from £1 per cent. for lineal issue to £10 per cent. for strangers in blood. The Finance Act, 1894, practically abolished the £1 per cent. duty.[3] Then came The Finance Act, 1910, which, in the case of considerable estates, re-imposed the £1 per cent. duty and also charged it upon the husband or wife of the testator or intestate, raised the £3 per cent. rate for brothers and sisters and their descendants to £5 per cent., and charged all other legatees at £10 per cent.[4]

Legacy Duty differs from Estate Duty in the fact that the latter duty falls upon the property passing on a death without regard to the persons who benefit, but Legacy Duty is imposed upon the actual benefit taken by the legatees at a rate depending upon the relationship borne by them to the testator or intestate. Legacy

[1] 20 Geo. III. c. 28.
[2] 36 Geo. III. c. 52.
[3] F. A. 1894, s. 1, 1st Schedule, 5th par.
[4] F. A. 1910, s. 58.

Duty, moreover, except in the case of *donationes mortis causa*, is only payable under a will or intestacy and (except under the will of a testator dying before 1st July, 1888[1]), only on personal property, excluding leaseholds.

It differs from Succession Duty in that, except in the case of *donationes mortis causa*, it is only payable under wills or intestacies and not under settlements or other dispositions. Formerly, too, where a testator died after 1st July, 1888,[2] the rates of Succession Duty on property which had not borne Probate Duty were higher than those of Legacy Duty, but now where Estate Duty is paid the rates are the same.

Another peculiarity of Legacy Duty is that it is dependent on the domicil of the testator. The rule of law is that pure personal estate, wherever it may in fact be, follows the domicil of the owner, and Legacy Duty is therefore only payable on the personal estate of persons domiciled in the United Kingdom. Therefore, if a testator is domiciled abroad, no Legacy Duty is payable in this country even on his personal estate locally situate here.

The duty was formerly payable on the proceeds of real estate directed to be sold and legacies and annuities charged by will upon real estate, but only where the testator died before 1st July, 1888. Since that date Succession Duty is payable instead.[3] Instances of Legacy Duty payable in these cases are not now of frequent occurrence and practically only arise where duty becomes payable on the death of a tenant for life of the proceeds of real property given by the will of a testator dying before 1st July, 1888.

[1] 51 Vict. c. 8, s. 21 (2). [2] *Ibid.* [3] *Ibid.*

The duty may be conveniently considered under similar heads to those adopted in the case of Estate Duty: viz.—

1. The Property upon which it is Payable.

2. The Rates and Amount of Duty Payable.

3. The Persons Accountable.

4. Exemptions.

# CHAPTER VII.

## THE PROPERTY UPON WHICH LEGACY DUTY IS PAYABLE.

LEGACY Duty is payable upon—

(1) *Donationes mortis causa.*[1]

(2) Every gift by any will or testamentary instrument of any person which by virtue of such will or instrument is payable out of the *personal or moveable estate* or effects of such person, or of which he had power to dispose, whether such gift shall be by way of annuity or in any other form[2]; and also the clear residue of the personal estate of any person, whether he dies leaving a will or dies intestate.[3] This covers the ordinary personal property of which a person may die possessed, *i.e.* his money, stocks, shares, securities for moneys, business assets, furniture and moveable property generally. Strictly speaking, personal property also includes leasehold property, but for Legacy Duty and Succession Duty purposes leasehold property is treated as real estate and by The Succession Duty Act, 1853, was made liable to Succession Duty.[4]

[1] 8 & 9 Vict. c. 76, s. 4. [2] *Ibid.* [3] Stamp Act, 1815, s. 2.
[4] Succession Duty Act, 1853, Sections 1 & 19.

As has been noticed, Legacy Duty is also payable on real estate including leaseholds directed to be sold by the will of a person dying before 1st July, 1888. For example: A., who dies in 1887, gives real estate to B. for life and on his death upon trust to sell, and the proceeds to his nephew C. B. dies in 1900. Legacy Duty is payable on the real estate directed to be sold. If, however, A. the testator had died in 1890, Succession Duty and not Legacy Duty would be payable. As, however, Estate Duty would in this case be payable on the death of B., the rates of Legacy Duty and Succession Duty would be the same, so that the distinction is not now very material.

(3) Real estate, which owing to certain rules of law has become impressed at the death of the deceased with the character of personal estate. Of such a kind is real estate belonging to a partnership which on the death of a partner passes as personal estate in order to facilitate commercial relations.[1]

*Donationes mortis causa* (as to which see page 21) are expressly made liable to Legacy Duty[2] and are the only instance of Legacy Duty being payable otherwise than under a will or intestacy.

If a testator releases a recoverable debt due to him, Legacy Duty is payable on the debt by the debtor, as practically the release amounts to a gift by the testator

[1] Forbes *v.* Steven, [1870] L. R. 10 Eq. 178; Stokes *v.* Ducroz, 38 W. R. 535.

[2] 8 & 9 Vict. c. 76, s. 4.

to the debtor of the amount owed.[1] Interest on the duty is regarded as running from a year after the death, as in the case of an ordinary legacy.

A direction by a testator to pay the debts of another person is a gift to such person of the amounts owing and he is accordingly liable to pay duty. But if the debtor is absolutely insolvent, the direction is regarded as a legacy to the creditors, and they are liable to Legacy Duty.[2]

If a testator releases a debt owing from several persons, some of whom die before him, the release operates as a benefit to the survivors.[3]

Legacy Duty is still payable even though a condition is attached to the legacy, except to the extent that the fulfilment of the condition is a pecuniary benefit to the estate.[4] Thus, if A. bequeaths £100 to B. on condition that he pays £20 to C., Legacy Duty is presumably payable on £80 by B. and on £20 by C. A gift to a creditor of an amount in excess of the debt due to him with a direction to the creditor to release such debt would render the creditor liable to Legacy Duty on such excess.[5]

A gift to a person with a legal obligation to maintain other persons imposes a liability to Legacy Duty on the benefits to which the latter are entitled.[6] Thus, where a testator gives his residuary estate to his widow with the obligation of maintaining his children, Legacy Duty would be payable on the benefits received by the children if the limits of value contemplated by The Finance Act, 1910, s. 58 (2), were exceeded.

[1] Attorney-General *v.* Holbrook, 3 Y. & J. 114.
[2] Foster *v.* Ley, 2 Bing. N. C. 269.
[3] Attorney-General *v.* Holbrook, 12 P. R. 407.
[4] Sweeting *v.* Sweeting, 22 L. J. 441. [5] *Ibid.* [6] *Re* Harris, 7 Ex. 344.

A legacy or annuity to a person on condition that he maintains certain pet animals of the testator is treated as held in trust for the animals to the extent of the cost of their maintenance—and so far, as not liable to Legacy Duty—and in trust for the residuary legatees to the extent of what remains beyond the cost of maintenance. But where the gift is clearly to the person beneficially subject to the condition of maintaining the animals, or where the knowledge that the person would maintain the animals was the motive of the gift, Legacy Duty is payable on the legacy or annuity as an absolute gift to such person without regard to the maintenance of the animals.[1] A mere provision for the maintenance of an animal so far as the legacy was so applied would not be liable to Legacy Duty.

A direction in a will to pay the testator's debts does not, of course, create any liability to Legacy Duty, for in order to constitute a legacy it is essential that there should be an act of bounty on the part of the testator. This is so even if the recovery of the debts is barred by lapse of time, for it is open to the testator or his executor to pay them at any time.[2] But where the debts have been absolutely released or extinguished (as, for instance, where the testator had become bankrupt and obtained his certificate of discharge) Legacy Duty would be payable.[3]

Where a testator has in his lifetime covenanted to leave a certain share of his residuary estate to a person, Legacy Duty is none the less payable on his death.[4] It cannot be treated as a mere debt due from the

[1] *Re* Dean, 41 Ch. D. 552. [2] Williamson *v.* Naylor, 3 Y. & C. 208.
[3] Turner *v.* Martin, 7 De G. M. & G. 429.
[4] Jervis *v.* Wolferstan, L. R. 18 Eq. 81.

estate, for the fact that he leaves a residuary estate out of which the covenant can be satisfied is to be regarded as an act of bounty, as he may if he chooses so dispose of his estate in his lifetime that there is no residue. It is otherwise where the covenant is to leave a specific or definite sum. In such a case a debt is created as the covenantor binds himself to leave sufficient assets to satisfy the covenant.[1] Succession Duty may, however, be payable.

Legacies to Executors.—Very often a legacy is given to an executor for his trouble in acting. It is liable to Legacy Duty, as the rule is that an executor cannot make any charge to recompense himself for his trouble in acting. So that a gift of this kind, although it may be inadequate to recompense the executor, has to be regarded as an act of bounty on the part of the testator.[2]

In strictness, duty is also payable under the same principle where there is a direction in the will authorising the executor to charge professionally for what he does in connection with the estate.[3] For example: where there is such a power to charge, an executor in business as an estate agent or auctioneer who acts as a valuer of the deceased's property or puts it up to auction is liable to Legacy Duty on the amount of his fees. This is so even though the executor would be entitled to employ, at the expense of the estate, professional assistance to do the work actually performed by himself. The same rule would apply to a solicitor executor who acts in winding up an estate.[4] The liability to duty does not, of course,

[1] Eyre *v.* Monro, 26 L. J. Ch. 757.
[2] *Re* Pooley, 40 Ch. D. 1. [3] Thorley *v.* Massam, [1891] 2 Ch. 613.
[4] *Re* White, [1898] 2 Ch. 217.

extend to payments out of pocket. In practice, however, it is understood that claims for duty in these cases are not now pressed except where a fixed annual sum is given to the trustee for collecting and distributing the rents and income or otherwise managing a trust estate. Legacy Duty is then payable from time to time on the sums so received, and accounts should be rendered periodically showing the amounts received to date.

As has been pointed out above, personal property is only liable to Legacy Duty if the deceased owner was domiciled in this country. So that if a person is domiciled here all his personal estate is liable to Legacy Duty, including moveable or personal property abroad. The rule is that property of this nature follows the person of the owner so as to be legally situate in the place of his domicil. The liability to Legacy Duty depends, therefore, entirely upon domicil and is quite independent of the actual situation of the property,[1] so that if a deceased person dies domiciled abroad possessed of English Consols no Legacy Duty is payable in this country and, conversely, if a person domiciled in England is possessed of French rentes or Russian Government securities, Legacy Duty is payable under his will.[2] (See also page 220 as to domicil).

A legacy is only liable to duty under the will of the testator out of whose property it takes effect, so that where a testator bequeaths a sum to a legatee and directs that if the latter predeceases the testator the legacy shall be paid to the legatee's next-of-kin or to his executors or administrators, or to the persons who would be entitled if the legatee had died immediately after him, Legacy Duty is only payable under

[1] Thomson *v.* Advocate-General, 12 Cl. & Fin. 1.

[2] *Re* Ewin, 1 Cro. & Jer. 151.

the testator's will, although in the last two instances the legacy in effect becomes part of the legatee's estate. The rule is that a legacy cannot be given to a person who is dead at the testator's death[1] and the legacy is therefore treated as a direct benefit by the original testator to the legatee's next-of-kin or to the beneficiaries entitled under his will or intestacy, as the case may be. Where, however, the legacy is given to a person for life and then to his executors or administrators. Legacy Duty is payable, for the above rule does not apply, as the legatee was actually living at the death of the testator and the bequest in fact gives him an absolute interest in the legacy.

The case may, however, come under Section 33 of the Wills Act, which provides that legacies to children or other issue of the testator shall not lapse by the legatee's death in the testator's lifetime leaving issue, but shall take effect as if the legatee had died immediately after the testator. The legacy is thus made part of the legatee's personal estate and is liable as such to his debts. Legacy Duty may therefore be payable both under the will of the original testator and also under the will or intestacy of the deceased legatee.[2] It should, however, be borne in mind that Estate Duty is also payable in both estates, and where this is the case Legacy Duty would not be payable by lineal issue unless the taxable limits for the £1 per cent. rate were exceeded (see also page 182).

Where the deceased has a general power of appointment under a will, Legacy Duty is payable both under the will of the person creating the power and under the will of the person exercising it.[3] Thus if £1000

[1] Lord Advocate *v.* Bogie, [1894] A. C. 83.

[2] *Re* Scott, [1901] 1 K. B. 228.

[3] Legacy Duty Act, 1796, s. 18, and see *re* Cholmondeley, 1 Cro. & M. 149, and Platt *v.* Routh, 6 M. & W. 756.

is given by will to A. for life and on his death as he shall by will appoint, and in default the legacy is given to other persons, Legacy Duty is in the first instance payable in respect of A.'s life interest, and on his exercising the power further Legacy Duty is payable on the *corpus* as if the legacy had been given to him absolutely, subject to an allowance in respect of the duty already paid. In addition to this, Legacy Duty is also payable under A.'s will by the person to whom he appoints the property.

Where the power of appointment is limited, enabling the donee only to appoint in favour of certain specified persons, the result is different. Legacy Duty is then only payable under the will of the person creating the power according to the relationship to him of the appointees, or, if the power is not exercised, according to the relationship of the persons entitled in default of appointment.[1] The result is the same whether the power is exercised by will[2] or by deed in the lifetime of the donee.[3]

Where the limited power is created by a deed Legacy Duty is not payable under the will of the person exercising such power; Succession Duty may, however, be payable.

Where a legacy fails (as, for instance, if the legatee dies before the testator or if the legatee disclaims or refuses to accept the legacy), no Legacy Duty is, of course, payable on the legacy as such, but as it presumably would fall into residue it would bear Legacy Duty as forming a part thereof.

[1] 8 & 9 Vict. c. 76, s. 4. [2] Attorney-General *v.* Pickard, 6 M. & W. 329.

[3] Sweeting *v.* Sweeting, 22 L. J. 441.

Where, however, a person is entitled under the will of the appointor to a legacy, and also (in default of appointment) under the will of the donor of the power, he cannot disclaim the legacy under the former will and elect to take under the latter will.[1]

Where the testator bequeaths the next presentation to a living, Legacy Duty is payable, such property being a chattel interest and forming part of the testator's personal estate. An advowson is real estate and is liable to Succession Duty (if and when sold).

In considering the liability to Legacy Duty, only the terms of the will should as a general rule be regarded, but if a legacy is given to A. and a secret trust was constituted between him and the testator for the benefit of other persons, Legacy Duty, or in the alternative Succession Duty,[2] may be payable at a rate depending upon the relationship (if any) of the beneficiaries of the secret trust to the testator.[3]

[1] Attorney-General *v.* Brackenbury, 1 H. & C. 782.

[2] See Succession Duty Act, 1853, s. 8.

[3] In Cullen *v.* Attorney-General for Ireland (1866, L. R. 1 H. L. 190), it was decided that the will alone was to be regarded and that Legacy Duty was payable as if the secret trust did not exist, but as that case was decided upon the Irish Stamp Acts, it may be that the decision is distinguishable.

# CHAPTER VIII.

## RATES AND AMOUNT OF LEGACY DUTY.

LEGACY Duty differs from Estate Duty in the fact that the rate of Legacy Duty does not depend on the amount of the estate but upon the relationship which the legatee bears to the testator or intestate.

The rates of Legacy Duty now payable[1] are as under :—

| Relationship of Legatee to Testator or Intestate. | Rate. |
|---|---|
| Husband or wife, children and their lineal descendants (including the husband or wife of any such person), and the father or mother or any lineal ancestor ... | £1 per cent. |
| Brothers and sisters and their descendants and the husband or wife of any such person ... ... ... ... ... | £5 per cent. |
| Persons in any other degree of collateral consanguinity and strangers in blood to the deceased, including those related only by natural ties ... ... ... | £10 per cent. |

Relations of the husband or wife of the testator or intestate are chargeable with duty as strangers in blood unless they are themselves related in blood to the testator or intestate.

[1] Stamp Act, 1815, s. 2 and Schedule, as amended by F. A. 1910, s. 58.

The £1 per cent. duty was in effect re-imposed by The Finance Act, 1910, and is only payable in certain cases: thus it is not payable—

(A) Where the principal value of the property passing on the death of the deceased (*i.e.* the testator, intestate, or donor *mortis causa*, and, in the case of succession under a *devolution*, the person on whose death the succession arises and in the case of a succession under a *disposition*, the person on whose death the *first* succession under the disposition arises) in respect of which Estate Duty is payable (except property in which the deceased never had an interest and property of which the deceased never was competent to dispose and which on his death passes to persons other than the husband or wife or a lineal ancestor or descendant of the deceased) does not exceed £15,000, whatever may be the value of the legacy or succession.[1]

For the purpose of ascertaining whether the limit is exceeded, only property liable to Estate Duty (with the exceptions referred to above, and, apparently, also except property on which the *first* succession under a disposition arose before 30th April, 1909) has to be taken into account (see page 238 as to the distinction between a *devolution* and a *disposition*). For example: suppose on A.'s death the following properties pass:—

| | £ |
|---|---|
| (1) His free estate, value ... ... | 8,000 |
| (2) Property settled by A. on his marriage on himself for life, value | 3,000 |
| Carried forward | £11,000 |

[1] F. A. 1910, s. 58 (2) (*a*), (3) & (4).

| | £ |
|---|---|
| Brought forward | 11,000 |
| (3) Settled property under his father's will on which Estate Duty was paid on the father's death, value | 20,000 |
| (4) Property settled by A.'s uncle on A. for life and on his death on A.'s nephew, value ... ... | 5,000 |
| (5) Property settled by deed by A.'s mother on herself for life (she died in 1870) and then on A. for life, value ... ... ... | 4,000 |
| Total ... | £40,000 |

Although the total exceeds £15,000, Nos. 3, 4, and 5 have not to be taken into account because No. 3 is not liable to Estate Duty on A.'s death, No. 4 passes outside the deceased's family and he was never competent to dispose, and in the case of No. 5 the first succession arose before The Finance Act, 1910. It follows that as Nos. 1 and 2 do not amount to £15,000 Legacy Duty at £1 per cent. is not payable by A.'s children under his will.

(B) The above provision determines generally whether the £1 per cent. Legacy Duty is chargeable, but a legatee may be relieved by reason of his *individual* benefit not amounting in value to a certain sum even though the £15,000 limit is exceeded. For (1) where the amount or value of the legacy or succession, together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor, does not exceed £1000, whatever may be the principal value of such property,

> Legacy Duty at £1 per cent. is not payable,[1] and (2) where the beneficiary is the widow or a child under the age of twenty-one and the amount or value of the legacy or succession, together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor, does not exceed £2000, whatever may be the principal value of such property, Legacy Duty at £1 per cent. is not payable.[2]

Assuming the £15,000 limit is exceeded, the test of exemption is the total *individual* benefit to the legatee, whether as a legacy, share of residue, or succession, so that if a child is given merely a life interest and the value according to the tables does not amount to £1000 (or to £2000 if he is under twenty-one) the Legacy Duty is not payable.

It should be noted that the £1000 limit applies to all legatees taxable at the £1 per cent. rate. The £2000 limit, however, only applies to the widow and infant children. Infant grandchildren are not exempted if the benefit to them exceeds £1000 but does not exceed £2000.

All legacies and successions derived from the same testator, intestate, or predecessor by the same beneficiary have to be taken into account, so that if furniture worth £1000 is given by deceased's will to his widow and she also takes a life interest worth £1500 in a fund under a settlement made by him, Legacy Duty is payable on the £1000, and Succession Duty on the life interest, as together they exceed £2000 in value.

If, however, a present benefit under the taxable limit is given and the legatee takes a further benefit after the death of a life tenant, Legacy Duty is not

[1] F. A. 1910, s. 58 (2) (*b*). [2] F. A. 1910, s. 58 (2) (*c*).

at once chargeable on the present benefit, but when the future benefit falls into possession Legacy Duty is chargeable on both if the taxable limit is exceeded. If it is certain that the ultimate benefit will exceed the taxable limit and it is desired to account at once for duty on the present benefit, discount should be claimed. Thus, if A. gives his son B. a present legacy of £500 and a further sum of £3000 on the death of his wife, Legacy Duty on the £500 cannot be claimed until the widow's death as the present benefit to the son does not amount to £1000, but if it is desired to pay duty on the £500 at once, discount for the widow's life will be allowed.

Again, suppose A. by will gives legacies of £500 to each of his three children and the residue of his personal estate to his widow for life and on her death to his children as she by will appoints: Legacy Duty is not payable at the testator's death on the legacies as the present individual benefit does not amount to £1000 and the widow may appoint such a sum to one of the children that his total benefit derived from the testator does not reach £1000, and he is therefore exempt from duty. On the widow's death, however, Legacy Duty becomes payable on the legacies of £500 and on the shares of residue if the total benefit to each legatee exceeds £1000. Duty may, however, be paid at once under discount on the testator's death on the legacies on the understanding that it is to be repaid if it is subsequently found that the total benefit did not reach the payable limit.

The £1 per cent. Legacy Duty is not payable under the will or intestacy of a person dying before the 30th April, 1909,[1] and therefore where A., who died in 1900, by his will gave a legacy of £3000 to his

[1] F. A. 1910, s. 58 (4).

wife for life and on her death to his son B. absolutely, Legacy Duty at £1 per cent. is not payable on the death of the widow after the passing of The Finance Act, 1910.

Exemption from £1 per Cent. Rate.—Subject as above, estates which have paid Estate Duty are exempted from Legacy Duty at £1 per cent.[1] The liability to that rate is in effect confined to estates of considerable amount, as in the first instance it is not payable at all unless the property passing and liable to Estate Duty (except as mentioned above) exceeds £15,000 and even then only if the total individual benefit, whether as a legacy or as a succession derived from the same person, exceeds £1000 (or in the case of the widow or an infant child, £2000).

It will be noted that the £1 per cent. duty, if payable, is charged not only on lineal issue and lineal ancestors but also on the husband or wife of the testator or intestate. Heretofore no Legacy Duty had been payable by a legatee who was the husband or wife of the testator or intestate.

Where a testator makes a bequest to his wife and they are divorced before his death so that his marriage is in fact dissolved, Legacy Duty would be payable according to the relationship in blood (if any) subsisting between him and the legatee or, if none, £10 per cent. would be payable as between strangers in blood. This does not apply to any other legatee who, by marrying a relation of the testator before his death becomes liable to a less rate of duty.[2] The fact that a divorce had taken place before the testator's death would not take away from any such legatee the benefit of the lower rate of duty.

[1] F. A. 1894, s. 1, 1st Schedule, 5th par.
[2] Succession Duty Act, 1853, s. 11.

The rates of duty given in the foregoing table only apply where the testator or intestate died on or after the 30th April, 1909,[1] so that if on the death of a tenant for life after that date Legacy Duty became payable on a fund under the will of a person dying before that date, the rates in force prior to The Finance Act, 1910, would apply. They were as follows:—

| Relationship to the Testator or Intestate. | Rate. |
|---|---|
| Children and their lineal descendants or the husband or wife of any such person, father or mother or any lineal ancestor (*This rate was not payable where Estate Duty had been paid.*[2]) | £1 per cent. |
| Brothers and sisters and their descendants, or the husband or wife of any such person ... ... ... ... ... | £3 per cent. |
| Brother or sister of the father or mother or their descendants, or the husband or wife of any such person ... ... ... | £5 per cent. |
| Brother or sister of a grandfather or grandmother or their descendants, or the husband or wife of any such person | £6 per cent. |
| Persons in any other degree of relationship and strangers in blood, including persons related only by natural ties ... ... | £10 per cent. |

[1] F. A. 1910, s. 58 (4). [2] F. A. 1894, s. 1, 1st Schedule, 5th par.

Thus if A., who died in 1898, gave a sum of £5000 to his wife for life and on her death to his nephew B. absolutely, and the wife dies after the 30th April, 1909, Legacy Duty would be payable by B. at £3 per cent. and not at £5 per cent.

The husband or wife of any relative of the testator or intestate is chargeable at the same rate as the person to whom he or she is married would have been liable.[1] For example: A. gives a legacy of £50 to a stranger in blood, B., who has married A.'s niece. B. is chargeable with Legacy Duty at £5 per cent., *i.e.* the rate of duty his wife would have been liable to, and not £10 per cent. as a stranger in blood. For the purpose of Legacy Duty, a legatee who has married a relation of the testator stands in the same degree of consanguinity to the testator as the person whom he or she has married.

The marriage must, of course, have taken place before the claim for Legacy Duty arises by the death of the testator, and a stranger in blood legatee will not, by marrying a relation of the deceased after the death, obtain the right to pay at a lower rate; though having once gained the position of a relation by marriage before the death, he still retains it for Legacy Duty purposes even though his wife predeceases the testator or the marriage is dissolved by divorce before the testator's death.

When Payable.—The right of the Crown to Legacy Duty arises on the death of the person under whose will or intestacy a benefit in personal estate is conferred, but the duty does not become payable until payment of the legacy or residue, or until it is retained for the benefit

[1] Succession Duty Act, 1853, s. 11.

of the legatees, or otherwise satisfied.[1] This provision allows the executors or accountable persons time to get in the estate and pay the debts and funeral and testamentary expenses. Thus the executors have a year in which to get in and administer the estate, and unless there is a direction in the will that legacies are to carry interest they can pay them at any time within that period without interest, but if they pay any legacy before that period expires, Legacy Duty thereon becomes payable and accounts should be rendered to the Commissioners within twenty-one days after payment. If the account is delayed beyond this period, interest on the duty is chargeable from the date of payment of the legacy to the date when the account is rendered.[2] But no interest is charged on the duty on ordinary accounts within one year from the death of the testator unless they are actually paid within that period and an account is not rendered within twenty-one days.

As the right to duty accrues at the death of the testator the Revenue is entitled not only to duty on the legacy or residue itself but also on all accretions, whether by way of interest, dividends, or otherwise, between the date of death and the time of payment or retainer,[3] so that where the legatee is entitled to a legacy, together with interest thereon or to the profits and accretions thereto, the latter should be added to the legacy and duty tendered on the whole. Where the gift is specific its value at the date it is allotted, appropriated, or retained should be accounted for and not the value at the date of death, and intermediate dividends and accretions (if any) should be added. If a legacy is directed to be

[1] Legacy Duty Act, 1796, s. 6.
[2] Nisbett's Trustees *v.* Learmonth, 8 Dunl. (Court of Sess.) 69.
[3] Attorney-General *v.* Cavendish Wightw., 82, and Thomas *v.* Montgomery, 3 Russ. 502.

paid at the expiration of two years without interest, Legacy Duty is not payable on the legacy until the expiration of that period, and no interest would in such case be chargeable. The intermediate income from the legacy should, however, be included in the residuary account. It follows that if the legacy is directed to be paid at the expiration of three months from the death and is not paid until six months, interest for three months should be added to the legacy and duty tendered on the total sum.

Residuary Estate.—When the legacies have been paid and the estate realised, a general account on *Form 3* showing what the residuary estate consists of should be rendered. This account should show the position of the estate at the date it is paid over or is retained upon trust, and such date is in practice taken as the date of the account. All unrealised assets should be accounted for at their value on such date and all intermediate profits and accretions and income should be included and, where necessary, apportioned up to the date of the account.[1]

The residuary account should show in detail the amounts realised by such of the securities as have been sold. Those unsold, which are to be retained or are allotted to the beneficiaries in specie, should be brought in at their value at the date of the account or at the date when they are actually allotted. All other property which has been realised should be accounted for at the price realised, unsold property being brought in at the value at the date of the account.[2] As such value is a matter of estimate it cannot be regarded as final until either a sale has taken place or the administration of

[1] Attorney-General *v.* Cavendish Wightw., 82, and Thomas *v.* Montgomery, 3 Russ. 502.

[2] Legacy Duty Act, 1796, s. 22.

the estate has been concluded and the property handed over in specie to the beneficiaries. If, therefore, after the residuary account is rendered, but before the administration of the estate is concluded, any property is realised for a sum in excess of the estimate for Legacy Duty, further duty is payable on the basis of the sale price.[1]

From the gross total of the estate should be deducted—(A) Estate Duty and Court fees; (B) Funeral expenses; (C) Debts; (D) Testamentary expenses such as solicitor's costs, costs of sale, and general expenses of realising and getting in and dividing the estate; (E) Legacies, and, where legacies are given free of duty, the Legacy Duty thereon.

Deduction may also be taken in respect of a tombstone or memorial which the testator has directed to be provided out of his estate. But where such a direction is in its nature charitable,[2] as where it enures for the benefit or ornamentation of a church (for instance, provision for a memorial window or for the repair of a monument in the church), Legacy Duty is payable on the amount so appropriated which may be deducted in the residuary account after the duty has been accounted for on a separate receipt.

The balance represents the residuary estate but, as already pointed out, to this should be added all income, profits, rents, and accretions which have accrued to the estate or which it has been capable of earning from the date of death up to the date of the account. Thus, dividends on securities, bank interest, rents of leaseholds and real estate directed to be sold where the proceeds are included in the account, and profits of business

[1] Attorney-General *v.* Dardier, 11 Q. B. D. 16.
[2] Hoare *v.* Osborne, L. R. 1 Eq. 585.

up to the date of winding up, after deducting all proper expenses of carrying on the same, should be accounted for. Duty is then assessed on the aggregate total without interest, but if considerable delay occurs between the date of the account when the residue is presumably paid over to the beneficiaries or retained for their benefit and the date when the account is brought in for assessment, interest on the duty is chargeable as the duty becomes in arrear from the date of payment or retainer.

It will be seen from the above that the values for the purposes of Estate Duty and for Legacy Duty are distinct. That for Estate Duty is the value on the day of the testator's death, while the value for Legacy Duty is, strictly speaking, the value of the estate at the time it is paid over to or retained for the benefit of the legatees, or, in practice, its value at the date of the account with all intermediate accretions.

Legacy Duty on Death of a Life Tenant.—Where, however, Legacy Duty becomes payable on the death of a previous limited owner, the claim for Legacy Duty may be regarded not only as accruing at such date but as also payable at the same time, for the estate has already been got in and realised and no considerable time is therefore required in order to ascertain the property on which duty is payable. The value for Legacy Duty should be that on the day when the limited owner dies and the account should not include any income earned between that day and the date when the account is actually delivered, but interest at £3 per cent. is charged on the duty from the date of death of the limited owner to the date of rendering the account. For instance: A. by will gives his residuary personal estate to his wife for life and on her death

to his nephew B. absolutely. As the wife is not liable to Legacy Duty (unless the £15,000 limit is exceeded) a residuary account is not required on A.'s death, but on the death of the wife Legacy Duty becomes payable at that date on the value of the investments then representing the trust estate, and interest on the duty is payable from that date to the date of delivery of the account. In strictness, in these cases the account should give particulars of the estate at the time it was retained in trust for the widow, showing the realisation of the estate, the payments made thereout, and the investments made by the trustees, but as a rule in ordinary cases it is sufficient to show the investments representing the trust estate at the death of the life tenant. If there is a considerable discrepancy between their value and the value of the estate at the testator's death an explanation in the form of a short history of the settled fund should be furnished.

Legacies Given Free of Duty.—Where there is a direction that any particular legacy or legacies are to be free of duty, no duty is to be charged upon the money applied for the payment of such duty[1] notwithstanding that the same may be deemed a legacy to the legatees and the amount of the Legacy Duty may be deducted in the residuary account.

Any words indicating an intention on the part of a testatator that the legatee shall receive his legacy without any deduction for duty are sufficient. Thus, "free of duty," "free from all duties," "without deduction,"[2] "clear of all deductions[3] or expenses,"[4] "clear of all taxes and outgoings,"[5] "clear,"[6] and "free."

[1] Legacy Duty Act, 1796, s. 21. [2] Barksdale *v.* Gilliatt, 1 Swanst. 562.
[3] Dawkins *v.* Tatham, 2 Sim. 492.
[4] Gosden *v.* Dotterill 1 Mylne & K. 56.
[5] Louch *v.* Peters, 1 Mylne & K. 489. [6] Ford *v.* Ruxton, 1 Coll. 403.

But a direction to invest a sum sufficient to produce a *clear* yearly income does not exonerate the fund from duty where it is given in succession to persons liable to different rates of duty.[1]

A direction to pay the duty on all legacies includes legacies given by a subsequent codicil[2] and a similar direction as to a legacy given by the will covers any legacy which may be substituted for it by a codicil[3] unless the substituted legacy is substantially a distinct bequest.[4]

Where a legacy is settled and so liable to Settlement Estate Duty a direction that it is to be free of all duty covers both the Legacy Duty and the Settlement Estate Duty, which are accordingly payable out of residue. The Settlement Estate Duty, which is thus an additional legacy, is not considered to be chargeable with Legacy Duty and may be deducted in the account of the legacy as well as in the residuary account.

Estate Duty is not affected by any such directions as it does not form a charge on the personal estate and is not therefore deducted from any legacies unless there is an express direction in the will that it shall be. The Estate Duty on the whole personal estate, including leaseholds, is, in the absence of special directions, deducted against the residue in the residuary account.

A residuary estate itself cannot be given free of duty, for obviously the duty can but be paid out of the residuary estate itself.[5] Where, however, the legacies are given free of duty, but the estate is insufficient to pay

[1] Sanders *v.* Kiddell, 7 Sim. 536.
[2] Byne *v.* Currey, 2 Cr. & Mee. 603.
[3] Cooper *v.* Day, 3 Mer. 154.
[4] Burrows *v.* Cottrell, 3 Sim. 375.
[5] Lord Londesborough *v.* Somerville, 19 Beav. 295.

them in full, the duty must, of course, be paid out of the legacies.[1] The method to be adopted when an estate is deficient and some of the legacies are given duty free is explained on page 217.

Where a legacy or residue is satisfied otherwise than by payment of money or appropriation of specific effects or is released or compounded for less than the value thereof, then the duty is to be paid on the value of the property taken in satisfaction or in consideration of the release or composition for same.[2] This provision applies to *bonâ fide* compromises under wills of doubtful construction, and Legacy Duty is payable in accordance with the actual division of the estate under the compromise.[3] If a legacy is compounded for and no arrangement is made as to the duty thereon, such duty will be a deduction against the sum payable to the legatee.[4] If a legatee disclaims his legacy or does not require interest on it where he has become entitled to interest, duty is not payable on the legacy or interest as such; but they would be chargeable as forming part of residue.

Where the testator directs his estate to be accumulated for a period and then divided among legatees, duty is payable on both the property itself and the accumulations at the date of division.[5]

[1] Lord Advocate *v.* Miller's Trustees, 21 Sco. L. R. 709, and *re* Turnbull, [1905] 1 Ch. 726.

[2] Legacy Duty Act, 1796, s. 23, and see Lord Advocate *v.* Watherston's Trustees, 3 S.S.C. 5th series, 627, and Lord Advocate *v.* Macrae, 31 S. L. R. 637 (also reported *sub nom.*, Lord Advocate *v.* Freckleton's Judicial Factor, [1894] 21 S. S. C. 4th series, 743).

[3] Lord Advocate *v.* Macrae, *supra.*

[4] Fischer *v.* Earl of Seafield, 1 S. S. C. 1st series, 685.

[5] Advocate-General *v.* Oswald, 5 S. S. C. 2nd series, 969.

Reversions.—Where a reversionary interest is given as a legacy or is included in a residuary estate liable to Legacy Duty the executors are not bound to pay the duty until it falls into possession. For instance: £500 is given to A. for life and on his death to C. If C. dies before A., Legacy Duty is not strictly payable on his death but the executors can wait until the death of A., when they would, of course, pay duty on the full £500 or the value of the investments representing it. In many cases, however, in order to dispose of all claims for duty, the executors prefer to pay duty at once and, assuming that the life tenant is in ordinarily good health, this course is acquiesced in by the Commissioners. The value in such cases is ascertained by taking the value of the fund as if in possession and deducting from it the value of the life tenant's interest, which may be calculated according to the tables in The Succession Duty Act, 1853.

If payment on a reversionary interest is not made when the residuary account is rendered and afterwards, owing to changes or other circumstances, the executors wish to dispose of the outstanding claim before the reversion falls in, the duty would only be accepted on the basis of a commutation.[1] If the commutation were agreed to, duty would be assessed on the fund at its value in possession and discounted for the life of the life tenant.

If the interest is to fall in on the death or remarriage of the life tenant or on some other event, only a proportion of the allowance in respect of the life interest is made (see page 161 as to Estate Duty).

[1] 43 Vict. c. 14, s. 11, and 44 Vict. c. 12, s. 43.

Apart from the question of commuting Legacy Duty in respect of interests in expectancy the Commissioners have a general power of compounding all claims for Legacy Duty, whether present or future, in consideration of a single payment.[1] And in cases of difficulty or complication they are empowered to compound all claims for Death Duties and to accept payment of such sum as, having regard to the circumstances, seems proper in full discharge of all claims.[2] They may also, if they think fit, remit any duty unpaid after twenty years or any interest thereon.[3] They have also a general power to remit interest at any time where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.[4]

ANNUITIES.—Where a legacy or residue is given by way of annuity, whether payable annually or otherwise for life or lives or for years determinable on any life or lives or for years or other period of time, the value of the benefit taxable with Legacy Duty is calculated in accordance with the tables given in The Succession Duty Act, 1853, based upon the period for which the benefit is expected to endure.[5]

Examples of the different kinds of bequests are given below:

(1) An annual sum or annuity *simpliciter*, payable for the legatee's life; or

(2) A sum of a certain amount with a direction to the executors to purchase an annuity with it; or

[1] 44 Vict. c. 12, s. 43. [2] F. A. 1894, s. 13.
[3] F. A. 1894, s. 8 (11), as extended by F. A. 1907, s. 13.
[4] F. A. 1896, s. 18 (3). [5] Legacy Duty Act, 1796, s. 8.

(3) An annuity of a certain amount with a direction to the executors to purchase same; or

(4) An annuity to a person charged on a legacy given to some other person; or

(5) A legacy or residue to a person for life and then to other persons liable (A) to the same rate of duty, or (B) to different rates of duty.

In the first case the annuity is payable out of the residuary estate and duty is assessed on the value of the same for the life of the annuitant calculated according to the tables in The Succession Duty Act, 1853. This duty may be paid by four equal payments, the first being due before or on completing the payment of the first year's annuity, or the whole duty may be paid at once under discount.[1] If the annuity determines by death or any other contingency (as, for instance, re-marriage or bankruptcy) before the expiration of the four years the instalments of duty which have not become due cease to be payable.[2]

In the second case Legacy Duty is payable on the full sum mentioned in the will as such a bequest vests the sum in the annuitant so that if he dies before the annuity is purchased his executors are entitled to have the sum paid to his estate.[3]

In the third case Legacy Duty is payable on the value of the annuity according to the tables without regard to the sum spent in purchasing the annuity.[4] The duty is payable in full and not by instalments, and if the annuitant dies before the purchase is made

[1] Legacy Duty Act, 1796, s. 8.
[2] *Ibid.*
[3] Barnes *v.* Rowley, 3 Ves. Jun. 305.
[4] Legacy Duty Act, 1796, s. 10.

his representatives can obtain payment of the sum required for the purchase.[1] Where the annuity is purchased, the sum actually paid may be deducted in the residuary account although it may be greater than the value according to the table in The Succession Duty Act, 1853. The annuity before purchase, unless given free of duty, has to be reduced in proportion to the amount of duty payable thereon, and such reduction is to be calculated in the same manner as the duty.[2] Thus, if the annuity is £100 and the rate of duty £5 per cent., the annuity to be purchased would be £95.

In the fourth case Legacy Duty is payable on the value of the annuity as in case No. 1, but is made payable by the person entitled to the legacy charged, and he is entitled to retain the payments made by him out of the first four years' payments of the annuity.[3] The duty on his legacy is paid on the balance remaining after the value of the annuity is deducted so that no further Legacy Duty becomes payable on the determination of the annuity.

Legacies in Equal Rate.—In the fifth case, where *all* the persons entitled are liable to the same rate of duty, Legacy Duty is payable on the *corpus* as in the case of a gift to a person absolutely.[4]

But where the life tenant is liable to one rate of duty and those entitled on his death to another rate, Legacy Duty is payable on the value of the legacy or residue for the life of the life tenant, and on his death Legacy Duty is again payable: viz.—on the *corpus* of the legacy or residue at such date.

[1] Dawson *v.* Hearn, 1 R. & M. 606.
[2] Legacy Duty Act, 1796, s. 10.
[3] Legacy Duty Act, 1796, s. 9.
[4] Legacy Duty Act, 1796, s. 12.

Thus, where a fund is settled and all the beneficiaries, present and future, are liable to the same rate of Legacy Duty, the duty may be cleared by one payment, and however many limited owners there may be, no further Legacy Duty will be payable on their respective deaths. For instance: A. by will gives a legacy or share or residue to his nephew B. for life, and on his death to B's. children. As B. and his children are liable to the same rate of duty, Legacy Duty is payable at once on the capital value of the bequest just as if it were an absolute gift to B., and on B.'s death no further Legacy Duty is payable by his children. The duty is payable by the executors or trustees out of the *corpus* of the fund, which is thus reduced to that extent.[1]

Similarly, if A.'s wife were given the first life interest, Legacy Duty would be payable on the capital value on her death. If, instead of A.'s wife being given a life interest the first life interest were given to A.'s cousin C., Legacy Duty would be payable on the value of C.'s life interest at £10 per cent. and on his death further duty at the rate of £5 per cent. would be payable on the *corpus*. In this instance C. is liable to a higher rate of duty than B. and his children, and the duty cannot therefore be taken on the capital until the death of C. The duty on C.'s life interest is payable out of the income of the fund, and the tenant for life and the trustees who pay him the income are the only persons accountable, and in the event of the duty not being paid, the Revenue has no right to have the duty paid out of the *corpus*.[2]

[1] Legacy Duty Act, 1796, s. 13.

[2] *Ibid*, and Bowra *v.* Rhodes, 10 W. R. 747.

Where an annuity as distinguished from the income of a fund is given to one legatee and the fund itself is given, subject to the annuity, to another legatee liable to the same rate of duty, payment of Legacy Duty on the *corpus* of the fund cannot be enforced and the duty on the annuity may be accounted by way of annuity and paid by four yearly instalments.[1]

Where a legacy is given to a person for life and on his death to a contingent class liable to the same rate of duty, and in the event of the failure of such class there is an intestacy under which the next-of-kin, who would be liable to a *lower* rate of duty, would take, it is not open to the executors to dispose of the claim for Legacy Duty by accounting for duty on the *corpus* at the higher rate. Though the Commissioners of Inland Revenue might not object to accept duty on that basis, they would apparently have no authority to return duty in the event of the failure of the contingent class. The proper course is, therefore, to account for Legacy Duty in the first instance on the life interest, and on the death of the life tenant on the *corpus* at the rate chargeable according to the circumstances then existing.[2]

Contingent Legacies.—Where a legacy or residue not chargeable by way of annuity is given, subject to a contingency which may defeat such gift and on the happening of which a higher rate of duty will become chargeable, duty is to be paid on the legacy or residue as an absolute bequest without regard to the contingency.[3] But if the contingency happens, and the legacy goes to a person liable to a higher rate of duty, the difference between the duty so paid and the higher rate of duty would then be payable.[4]

[1] Crow *v.* Robinson, 4 De G. F. & J. 337.
[2] *In re* Duppa; Fowler *v.* Duppa, [1912] 2 Ch. 445.
[3] Legacy Duty Act, 1796, s. 17. [4] *Ibid.*

In cases of this kind the value of the legacy for the purpose of taking the higher rate is its value at the happening of the contingency, and an allowance of the duty paid is made by deducting from the value such a capital sum as the duty already paid is sufficient at the higher rate to release. Thus, if a legacy of £1000 is given to a nephew, B., absolutely and in the event of his dying under twenty-one without issue to a cousin, C., Legacy Duty is paid in the first instance on £1000 at £5 per cent. A. dies without issue and owing to depreciation in investments, the value of the legacy has fallen to £900. The duty already paid, viz. £50, is sufficient at £10 per cent. to release £500 of the above value, leaving duty at £10 per cent. on the balance of £400, viz. £40 to be paid.

Where the value of any benefit given by will can only be ascertained from time to time by the actual application of the fund allotted for the purpose, or where by reason of the form and manner of the gift the amount or value of the benefit cannot be ascertained so that duty can be taken in the ordinary way, the duty is to be charged upon the sums of money or effects which shall be applied from time to time as separate and distinct legacies.[1] Thus, A. by will bequeaths a legacy to an infant legatee on his attaining twenty-one, with a direction that such part of the income as may be required is to be applied for his maintenance. Legacy Duty is to be accounted for periodically on the sums so applied, and when A. attains twenty-one duty becomes payable on the capital.[2] So also where trustees are given a percentage on trust income during the period they act as trustees, Legacy

[1] Legacy Duty Act, 1796, s. 11.

[2] Attorney-General *v.* Wade, [1910] 1 K. B. 703.

Duty is payable from time to time on the actual sums received by them, and periodical accounts should be rendered.

Duty Payable by way of Annuity.—As already explained, where Legacy Duty is payable by way of annuity it may, at the option of the parties accountable, be paid at once under discount, or by four equal payments, the first of which is to be made before or on completion of the first year's annuity and the others successively on completing payment of the three subsequent years' annuity.

This provision prevents the duty falling too heavily on the annuitant out of whose annuity or yearly income it is payable. Moreover, where an annuitant dies before all the four payments have become due and payable the remainder cease to be payable, and if in such case the duty has been paid in full under discount, a return of the proportion of instalments which would have not become due and payable at the death of the annuitant could be claimed.[1]

Where the annuity is given subject to a contingency, the duty is calculated in the first instance without regard to the contingency, and if the annuity subsequently determines upon the contingency other than the death of the annuitant, all payments which would have become due after the happening of such contingency cease to be payable and the persons paying the duty may apply for a return of so much of the duty paid as will reduce it to the duty which would have been payable for such annuity calculated according to the period for which the same shall have actually endured.[2]

[1] Legacy Duty Act, 1796, s. 8. [2] *Ibid.*

For instance, where an annuity or legacy or residue is given to a person for life or until he or she marries again, or to a man for life or until he becomes bankrupt or attempts to alienate his interest, duty is taken in the first instance on the value of the life interest by way of annuity. Then, if the contingency happens, the duty may, on application, be readjusted to fit the period for which the benefit actually endured.

Where duty is payable by way of annuity on, an annuity for which capital is directed to be set apart, a legacy or a share of residue, the proper course is for the accountable parties to deduct the capital set apart, the legacy or share of residue in their residuary account, and pay the Legacy Duty on the annuity or life interest on separate forms (*No. 2*). On the death of the annuitant or life tenant, further duty will become payable on the then value of the capital set apart, legacy, or share of residue. But it is open to the Commissioners to close the matter at once by allowing the parties to deduct merely the value of the annuity or life interest, and if this is done, the death of the annuitant or life tenant will not give rise to any further claim for Legacy Duty. Such deductions would not be allowed where the annuitant or life tenant was in precarious health, or where the deduction entirely exhausted the residuary estate.

Where personal estate is directed to be invested in real estate, it is liable to Legacy Duty as personal estate, unless it is given to different persons in succession.[1] In the latter case, each person is to pay Legacy Duty in the same way as if there had been no direction to invest in real estate unless the property

[1] Legacy Duty Act, 1796, s. 19.

has been actually applied in purchasing real estate.[1] If it has, Legacy Duty is not payable but the property becomes liable to Succession Duty instead.[2]

Estates *pur autre vie* are liable to Legacy Duty as personal estate where they devolve to the executors of the deceased and not to a special occupant.[3] An estate *pur autre vie* arises where real estate is given to one person during the life of another person. On the death of the owner of such an estate, it may vest in his heir or devisee as special occupant. But where there is no special occupant, the estate vests in the personal representatives of the deceased owner and is applicable as personal estate. In these cases it becomes liable to Legacy Duty. Where an estate *pur autre vie* devolves on a special occupant, Succession Duty and not Legacy Duty would be payable.[4]

[1] De Lancey *v.* Inland Revenue Commissioners, L.R 5 Ex. 102.
[2] Succession Duty Act, 1853, s. 30. [3] Legacy Duty Act, 1796, s. 20.
[4] Succession Duty Act, 1853, Sections 1 & 2.

# CHAPTER IX.

## THE PERSONS ACCOUNTABLE FOR LEGACY DUTY.

THE executors under a will or the administrator under an intestacy are primarily liable to account for and pay Legacy Duty on retainer for their own benefit of any legacy or the residue of any personal estate or share thereof, and also on delivery, payment, or other satisfaction or discharge of any legacy, residue of personal estate, or share thereof, to which any other person shall be entitled.[1]

Thus the time for payment of the duty arises—(A) When the executors are themselves the beneficiaries, upon retainer of the legacy or residue for their own benefit: (B) When other persons are the beneficiaries, upon the executors either retaining the property for the benefit of such other persons (as where the property is given in trust) or upon delivery, payment, or other satisfaction or discharge of the legacy or residue, so that if a legatee disclaims his legacy no duty is payable, as the legacy will not have been paid, satisfied, or discharged.

An actual payment of the legacy is not essential. No money may pass but the legacy may still be satisfied or discharged, and Legacy Duty is therefore payable.[2]

[1] Legacy Duty Act, 1796, s. 6.

[2] Attorney-General *v.* Holford, 1 Pri. 427, and Attorney-General *v.* Metcalfe, 6 Ex. 26.

When Legatee Liable.—If the executors have retained a legacy or residue for their own benefit without having paid the duty, or have paid or satisfied a legacy or residue to which other persons are entitled, having received or deducted the duty, and the duty has not been duly paid to the Revenue, the same is to be a personal debt due from such executors to the Crown.[1] If, however, they have paid or satisfied the legacy or residue without having received or deducted the duty, then such duty is a debt due from them and from the *legatee* as well.[2]

Besides executors or administrators in the ordinary sense, trustees to whom a settled legacy is paid, or in whom it is vested under the terms of the will,[3] and even persons who act wrongfully in administering the estate,[4] are made liable for the duty. As a general rule the duty should be deducted by the executors from the legacy before payment over, or if the legacy is specific and handed over in specie, the duty should be received by them from the legatee before delivery or handing over.

It will be observed that even though the executors have parted with the property without deducting or receiving the duty, they are still liable to the Crown, but the legatee is, in such case, also accountable. If the executors, being the persons primarily accountable, are called upon to pay any sums on account of duty, they are entitled to be reimbursed by the legatee.[5] Where a legatee has sold his legacy, the purchaser is under the same liability as the legatee, and if the

[1] Legacy Duty Act, 1796, s. 6. [2] *Ibid.*
[3] Legacy Duty Act, 1796, s. 13.
[4] See Attorney-General *v.* New York Breweries Co., [1899] A. C. 62.
[5] Foster *v.* Ley, 2 Bing. N. C. 269.

legacy has been paid by the executors in full, the purchaser must reimburse the latter any sums they may be called upon to pay for Legacy Duty.[1]

There are, however, certain exceptions or modifications of the rule as to the liability of executors and administrators. Thus—(1) Where a legacy is given subject to an annuity to another person, the legatee is liable for the duty on the annuity and on the legacy,[2] and the executors cannot deduct the whole duty before paying over the legacy to the legatee. In such cases the legatee is entitled before paying over the first four yearly instalments of the annuity to the annuitant to deduct from each instalment one fourth of the duty payable in respect of the annuity.[3] Of course, if the legacy were given to trustees upon trust to pay the annuity and subject thereto for the benefit of the legatee, such trustees would be the persons primarily liable for the duty and they should deduct the proper proportion thereof against each beneficiary; (2) Where articles of furniture, plate, &c. are given to be enjoyed by different persons in succession, Legacy Duty is not payable until the property comes into the hands of a person competent to dispose or who actually sells it, and the executors are quite justified in handing over such articles to the tenant for life without providing for the future claim for duty which is accordingly primarily payable by the person who becomes competent to dispose of the property, or who actually sells it whether he is entitled to do so or not.[4] Similar remarks apply to chattels certified by the Treasury to be of national, scientific, historic, or artistic

[1] Nisbett's Trustees *v.* Learmonth, 8 Dunl. (Court of Sess.) 69.

[2] Legacy Duty Act, 1796, s. 9. [3] *Ibid.*

[4] Legacy Duty Act, 1796, s. 14, and Attorney-General *v.* Bruce, [1901] 2 K. B. 391.

interest which, whether settled or not, are exempted from duty until sold.[1] On a sale taking place, Legacy Duty becomes payable by the person for whose benefit the sale is made and the duty, if unpaid, becomes the debt of such person; (3) Where a legacy or residue is given so that different persons become entitled in succession, the executors are accountable for duty on the *corpus* where all the beneficiaries are liable to the rate of duty. But where duty is chargeable at different rates, the executors are absolved from liability after they have accounted for the duty immediately payable and handed over the fund to the trustees of the will.[2] In such case the trustees, including any new or substituted trustees, are accountable for the duties subsequently payable.[3] For instance: suppose £500 is given to A. for life and on his death to B., and A. and B. are liable to different rates of duty; the executors, after accounting for the duty on A.'s interest and handing the legacy over to the trustees, are absolved from further liability and on the death of A. the trustees are liable to account for the duty then payable; (4) Where a legacy, not chargeable by way of annuity, is given subject to a contingency, duty is chargeable as on an absolute bequest, but if the contingency happens and the legacy goes to a person liable to a higher rate of duty, he is liable to pay the difference.[5]

The reason for these exceptions is that the executors' duty is to get in the testator's estate, pay his debts, and finally distribute the estate, and they could not safely distribute if they were liable to indefinite claims for the duty in the future.

[1] F. A. 1910, s. 63, extending F. A. 1896, s. 20, and F A. 1910, s. 96 (1), 6th Schedule. [2] Legacy Duty Act, 1796, s. 13.

[3] *Re* Jones's Trust, 21 L. J. Ch. 566. [5] Legacy Duty Act, 1796, s. 17.

It should be noted that, unlike Succession Duty, Legacy Duty is payable on each devolution of a legacy or residue although the beneficiary may not have lived to enjoy the property.[1] Thus, to take an extreme case, A. by will gives £5000 to B. for life and on his death to C. absolutely. C. predeceases B., having bequeathed the fund to D. D. also predeceases B., without leaving a will, and the fund passes to E., his next-of-kin. Legacy Duty is payable on each devolution (unless it comes within one or other of the exemptions from Legacy Duty). Thus A.'s trustees after paying the Legacy Duty which arose on the death of B. under A.'s will can safely hand over the balance of the fund to the executors of C. who are liable to account for the Legacy Duty payable under his will. They then hand over the balance to the duly constituted personal representatives of D., who in their turn are liable to account for the Legacy Duty under his intestacy. If, however, A.'s trustees handed the fund to E. direct they would render themselves liable, as administrators *de son tort* of the estates of C. and D., to the Legacy Duty payable on each devolution.[2]

Where, under a deed, a person has and exercises a general power of appointment by will over a fund, the executors of his will, and not the trustees of the settlement, are the persons to administer the fund and to pay the Legacy Duty under the appointor's will.[3] If, however, the trustees of the settlement distribute the fund they would be liable to the Legacy Duty as executors *de son tort* of the appointor's estate.[4]

[1] Attorney-General *v.* Malkin, 2 Phil. 64; Attorney-General *v.* Maxwell, 10 Ir. C. L. R. 262; and Attorney-General *v.* Cleave, 31 L. T. (N. S.) 86.

[2] Attorney-General *v.* New York Breweries Co., [1899] A. C. 62.

[3] *Re* Philbrick's Trusts, 34 L. J. Ch. 368.

[4] *Re* Hoskin's Trusts, 6 Ch. D. 281.

Where accountable parties declare themselves ready and willing to pay over or satisfy any legacy after deducting the duty thereon, but the legatee refuses to accept and give a proper release for it, then if any action is afterwards brought to recover the legacy the Court may order all costs and expenses to be paid by the legatee so refusing.[1]

It will be observed that persons accountable for the Legacy Duty have the right of deducting it before payment over from the legacy itself, and a purchaser of the legacy stands in exactly the same position as a legatee and has no claim to be reimbursed by the legatee for the Legacy Duty deducted unless this has been expressly agreed to at the time of sale.[2]

Executors cannot, however, deduct the duty on one legacy against another legacy to the same person nor the duty on a legacy to one person against the legacy to another person.[3] Nor has the Revenue any claim on one legacy or on one share of residue for the duty on some other legacy or share of residue.[4] Where the legatee pays the duty to a solicitor or other authorised agent of the executor or trustee, such legatee is not liable if the duty is misappropriated, and the executor or trustee cannot afterwards recover it from the legatee or deduct it from his legacy.[5] A purchaser of a legacy is only liable for the duty on his own legacy. So that where two different legacies are given to a person and he sells one of them, the purchaser cannot be called upon to pay the Legacy Duty on the legacy not included in his purchase.

[1] Legacy Duty Act, 1796, s. 24. [2] *Re* Repington, [1904] 1 Ch. 811.
[3] Attorney-General *v.* Giles, 5 Hurl. & N. 255.
[4] Wright *v.* Barnwell, 13 Jur. 1041.
[5] Horn *v.* Coleman, 26 L. J. Ch. 213.

Where an action is instituted in any Court for the administration of a deceased person's estate, or of any property chargeable with duty which is under the control of the Court, provision is to be made by the Court for due payment of the Legacy Duty, and no payment out of Court is to be made until the official receipt for such duty, or, where the particulars in the official receipt cannot be identified with those in the order directing payment out of Court, a certificate from the Commissioners of Inland Revenue of the payment of Legacy Duty or that no such duty is payable, is produced.[1] The duty is assessed on presentation of the accounts accompanied by the Order directing payment out and a requisition is then sent to the Paymaster-General under which a transfer of the amount payable is made from the fund in Court to the Inland Revenue account.

Although in these cases the Court is required to provide for the duties, the executors are, nevertheless, bound to see that proper accounts are rendered and the duty paid, and if for any reason the Court omits to provide for the duty, the accountable parties would be liable to account to the Revenue[2] though they could call upon the beneficiaries to recoup them if the estate had been distributed.[3] If, however, the executors permit a life tenant of a fund in Court to receive the full income and do not see that duty is first deducted they cannot, in the event of their being called upon to account for the duty, claim to be recouped out of the *corpus*.[4] Solicitors also, who are acting for accountable parties, are under an obligation to see that provision is duly made by the Court for payment of duty before payment of a legacy or fund out of Court is made.[5]

[1] Legacy Duty Act, 1796, s. 25, and Succession Duty Act, 1853, s. 53.
[2] *Re* Sammon, 3 M. & W. 381.
[3] Foster *v.* Ley, 2 Bing. N. C. 269.
[4] Bowra *v.* Rhodes, 10 W. R. 747.
[5] Bryan *v.* Mansion, 26 L. J. Ch. 510.

Executors may from time to time distribute such portions of the estate as has been administered on payment of the proper amount of duty.[1] But no legacy or share of residue of personal estate or any part thereof is to be paid or satisfied without taking a receipt or discharge in the form provided by the Act.[2] Printed forms of this receipt containing instructions as to how it is to be filled up are furnished by the Commissioners, and should be used by the accountable parties. The receipt is to be duly stamped and, unless this is done, cannot be received in evidence.[3] Where the duty is payable by way of annuity, the stamped receipts are not required except on completing the payments for each of the four years' instalments.[4]

Executors paying or satisfying legacies or shares of residue without taking such receipts and having the same stamped, and also the legatees receiving such legacies or shares of residue without giving the proper receipts, are liable to a fine of £10 per cent. on the value of the property in question.[5]

Receipts for legacies or shares of residue are to be brought for assessment and stamping within twenty-one days of the date thereof under a penalty of £10 per cent. on the duty.[6] The executors are the persons liable to see that the receipts are duly stamped and the legatee is under no obligation in this respect.

Executors who retain a legacy or residue for their own benefit are required to bring in an account and on assessment of the duty to pay same within fourteen days under a penalty of treble the amount of duty.[7]

[1] Legacy Duty Act, 1796, s. 26.
[2] Legacy Duty Act, 1796, s. 27. [3] *Ibid.* [4] *Ibid.*
[5] Legacy Duty Act, 1796, s. 28.
[6] Legacy Duty Act, 1796, s. 29, and 48 Geo. III. c. 149, s. 44.
[7] Legacy Duty Act, 1796, s. 35.

In practice, penalties for delay in payment of Legacy Duty are not usually insisted upon by the Commissioners, and the acceptance by them of the proper duty and interest thereon is an absolute waiver of any penalties which may have been incurred.[1]

The forms of receipt for legacies are not liable to Stamp Duty, and therefore it is not necessary for legatees to affix receipt stamps when signing receipts for their legacies.[2]

CORRECTIONS.—Where too little duty has been paid by mistake, the additional duty, if paid within three calendar months, together with a penalty of £10 per cent. thereon, will be accepted and a proper receipt given.[3] The penalty is not usually insisted upon unless there has been undue delay or other circumstance.

A case of too little duty having been paid occurs where the relationship of the legatee to the deceased is wrongly given and a higher rate is in fact payable. In such case, a fresh receipt showing the proper amount of the duty and also the old receipt should be furnished. The duty is then assessed afresh in full and the duty already paid appropriated in payment *pro tanto*, the old receipt being cancelled.

Where by reason of infancy, lunacy, absence beyond the seas, or a *bonâ fide* doubt as to the law, a legacy or residuary estate cannot be paid over by the executors, it is open to them after satisfying the claims for duty to discharge their liability to the legatee by paying the fund into Court.[4] It can then only be dealt with by the proper person making formal application to the Court for payment out. The costs

[1] 31 & 32 Vict. c. 124, s. 9.
[2] Legacy Duty Act, 1796, s. 41.
[3] *Ibid.*, s. 30.
[4] *Ibid.*, s. 32, and 56 & 57 Vict. c. 53, s. 42.

of paying a legacy into Court should be borne by the estate, but the costs of payment out of Court fall on the legacy itself.[1]

Composition.—The Commissioners have a general power in cases of difficulty or complication to compound any Death Duties (see page 115)[2]; and where there is a presumptive future claim for duty in respect of any interest in expectancy upon the determination of a life or other temporary interest, the Commissioners may, at their discretion, on the application of the accountable parties, commute the duty presumptively payable for a present sum.[3] They are also authorised to compound all claims for Legacy Duty, present or future, in consideration of a single payment.[4]

In cases of commutation, the value of the fund or property as in possession at the date of the account is taken and duty calculated in the ordinary way. The present value of such duty on a £3 per cent. basis is then ascertained, regard being had to any contingencies affecting the liability to such duty.

Return of Duty.—Where it is found that too much duty has been paid by reason of any debt being recovered against the estate, or loss, or any other just cause, a return of duty can be obtained on due proof on oath as to the facts being made.[5] So also duty paid by executors or administrators whose authority is afterwards revoked (as where the grant of probate is revoked) is to be returned. If, however, it is such as ought to be paid by the rightful executor or administrator it is not returnable but is allowed in account with the rightful executor or administrator.[6]

[1] *Re* Cawthorne, 12 Beav. 56.
[2] F. A. 1904, s. 13.
[3] 43 Vict. c. 14, s. 11.
[4] 44 Vict. c. 12, s. 43.
[5] Legacy Duty Act, 1796, s. 34.
[6] *Ibid.*, s. 37.

Limitation of Liability.—Where an executor has given notice in writing to the Commissioners of any claim to Legacy Duty in respect of any fund in his hands which he intends to distribute and shall have given them all the particulars they require, he may distribute the fund after satisfying any claim to duty and shall be entitled to a certificate discharging him from his liability to duty in respect of the fund.[1]

No person is liable for duty after six years from the settlement of the account in respect of which duty is payable where such account was a full and true one and contained all material facts. A trustee, executor, or administrator is similarly protected if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information, and belief.[2] It should be noted that this provision does not apply unless an account has been delivered.[3] If, therefore, an account has not been delivered before the time for payment in full of the duty has arrived, there will be no protection until an account has been delivered and six years have elapsed since an assessment of duty was made.

[1] 43 Vict. c. 14, s. 12.
[2] 52 & 53 Vict. c. 7, s. 14.
[3] Attorney-General *v.* Montefiore, 52nd Inland Revenue Report, page 55.

# CHAPTER X.

## EXEMPTIONS FROM LEGACY DUTY.

(1) Gifts to the Royal Family.

(2) Personal estate not exceeding £100.

(3) Specific legacies under £20 in value.

(4) Settled chattels until they come into the hands of a person competent to dispose.

(5) Books, prints, and articles of artistic or other special interest given to a body corporate.

(6) Similar articles certified by the Treasury to be of national, scientific, historic, or artistic interest until sold.

(7) Money left to pay duty.

(8) Legacies for charitable purposes in Ireland.

(9) Free estate not exceeding £1000.

(10) Bequests to widow, husband, lineal issue, or lineal ancestors where the taxable limits of value are not reached.

(11) The estate of a person domiciled outside the United Kingdom.

1. The gift of a legacy or share of residue to or for the benefit of any member of the English Royal Family is exempt from Legacy Duty.[1]

[1] Schedule to Stamp Act, 1815.

2. Where the whole of the deceased's personal estate does not amount to £100, Legacy Duty is not payable.[1] The exemption strictly only applies where the gross value does not amount to £100, but in practice duty is not claimed where the net amount, after deducting debts and funeral expenses, is under that sum. The exemption applies even where there is real estate which raises the total estate to over £100, so that in such a case where the testator directs his real and personal estate to be sold Succession Duty is payable on the portion attributable to the real estate and the remaining proportion goes free of duty. The estate may, however, be entitled to exemption from Succession Duty under exemptions corresponding to Nos. 9 and 10, on page 213.

3. A specific bequest is a gift of some specific item of deceased's estate such as articles of furniture, a specific sum of stock, or a share in a limited company as distinct from a pecuniary bequest, which is a gift of money generally.

The exemption from Legacy Duty of specific bequests under £20[2] in value does not apply where the legatee receives some other benefit from the personal estate which together with the value of the specific bequest raises the total benefit to over £20. For instance: A. by will gives £5 to B. and his piano, worth £10. No Legacy Duty is payable on the piano as the total benefit to B. is under £20. But if the specific legacy had been worth £15 Legacy Duty would have been payable on both bequests. If two specific bequests, each under £20 but together exceeding that value, were given to the same legatee, both would be liable to Legacy

[1] 43 Vict. c. 14, s. 13.

[2] Schedule to Stamp Act, 1815, as amended by 44 Vict. c. 12, s. 42.

Duty. The exemption still applies even though the beneficiary is given an interest in real estate and leaseholds as well as a specific bequest under £20 in value. The former benefit is a succession and liable to Succession Duty.

If a legatee takes an immediate specific bequest under £20 in value and a future pecuniary benefit (as, for instance, on the death of a life tenant) Legacy Duty is not payable on the specific bequest until the further benefit comes into possession and it is ascertained that the whole value is not under £20.

However many specific bequests were made by the testator to different legatees they would all be exempt if each were under £20 in value. For instance, where A. is managing director of a limited company and by his will gives to each of the employés a £10 fully paid share worth par, no Legacy Duty would be payable as the bequest to each employé is specific and under £20 in value.

Formerly, pecuniary legacies or shares of residue under £20 in amount were exempt from Legacy Duty, but this exemption was abolished in 1881, and all such legacies, however small the amount, are liable to duty.[1]

4. Plate, furniture, or other things not yielding income and settled upon persons in succession are not liable to duty while enjoyed in kind by a person not having power to dispose.[2] Thus if A. gives his furniture to B. for life, then to C. for life, and then to D. absolutely, Legacy Duty is not payable until the death of the survivor of B. and C. If, however, the chattels are sold or dealt with during the life of the limited owner, whether the transaction were carried out with or without

[1] 44 Vict. c. 12, s. 42.

[2] Legacy Duty Act, 1796, s. 14.

proper authority, Legacy Duty would become payable at once.[1] It should be borne in mind that articles that are consumed by use cannot be settled, and where a testator purports to bequeath them in succession, they vest absolutely in the first life tenant and duty is payable at once. The Legacy Duty on settled chattels is payable by the person for whose benefit the sale is made, or who has power to sell, or who has an absolute interest therein.[2]

Chattels of national, scientific, historic, or artistic interest do not now come within this exemption but are separately provided for (see No. 6 below).

5. Books, prints, pictures, statues, gems, coins, medals, specimens of natural history or other specific articles bequeathed to a body corporate for preservation and not for sale are not liable to Legacy Duty.[3] This exemption is extended in practice to gifts to trustees for public purposes of bodies which are not incorporated and to other gifts of specific articles to the nation.

6. Pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income as appear to the Treasury to be of national, scientific, historic, or artistic interest are not chargeable with Legacy Duty while enjoyed in kind, whether settled or not. But should they at any time be sold the person for whose benefit they are sold shall be accountable for Legacy Duty.[4] As already noted, there is a corresponding provision with regard to Estate Duty (see page 66).

[1] See Attorney-General *v.* Bruce, [1901] 2 K. B. 391.

[2] Legacy Duty Act, 1796, s. 14.

[3] 39 Geo. III. c. 73, s. 1, and Schedule to Stamp Act, 1815.

[4] F. A. 1910, s. 63, extending F. A. 1896, s. 20, and 6th Schedule to the F. A. 1910, s. 96, amending Legacy Duty Act, 1796, s. 14, as to chattels coming within this exemption.

7. Money left to pay Legacy Duty is not itself chargeable with Legacy Duty.[1] This exemption covers all legacies directed to be paid free of duty. In effect, such direction is a further legacy of the amount of the duty and, but for this exemption, Legacy Duty would have been chargeable. So also where a fund is directed to be set aside for payment of Legacy Duty the sums so applied are not to be charged with Legacy Duty.

When there is a direction freeing a legacy from duty (see page 189), such duty may be deducted against the residuary estate.

In strictness, where real estate is given free of duty, Legacy Duty is chargeable on the Estate Duty and Succession Duty payable in respect of such property, as in effect the direction amounts to a bequest to the devisee of the amount of the Estate Duty and Succession Duty. In practice, however, Legacy Duty is not claimed in such cases.

Where legacies are given free of duty and the estate is not sufficient to pay them in full so that they have to abate rateably, the duty is necessarily payable out of the legacies themselves and this exemption does not apply.[2] The Legacy Duty in such cases must be paid out of each legacy as abated.

Where some legacies are given free of duty and some are not and the estate is insufficient, the proper course is to apportion the assets between the legacies given free plus the duty thereon and the legacies not given free, leaving each legatee to bear his own duty. Thus, suppose the available assets amount to £1100 and legacies are given as follows :—

[1] Legacy Duty Act, 1796, s. 21. [2] *Re* Turnbull, [1905] 1 Ch. 726.

| | £ |
|---|---|
| £1000 to a nephew, free ... ... ... | 1000 |
| Duty thereon at £5 per cent. ... | 50 |
| £500 to a stranger, free ... ... ... | 500 |
| Duty thereon at £10 per cent. ... | 50 |
| £600 to a charity, not free ... ... | 600 |
| Total legacies and duties to be paid out of residue ... ... | £2200 |

| The residue of £1100 is divisible as follows:— | £ |
|---|---|
| $\frac{1050}{2200}$ of £1100 to the nephew ... ... (out of which he would pay to the Revenue £26 5s.) | 525 |
| $\frac{550}{2200}$ of £1100 to the stranger in blood ... (out of which he would pay to the Revenue £27 10s.) | 275 |
| $\frac{600}{2200}$ of £1100 to the charity ... ... (out of which the Revenue would be paid £30) | 300 |
| Total ... | £1100 |

8. Legacies given for the maintenance of poor children in Ireland or to be applied in support of any charitable institution in Ireland or for any purpose merely charitable are exempt from Legacy Duty.[1] The legacy must be charitable, though not necessarily for the relief of the poor, and to an Irish charity.[2] So that a legacy for purely religious purposes, as for masses in Ireland, would not be exempt.[3]

[1] 5 & 6 Vict. c. 82, s. 38.

[2] Attorney-General *v.* Hope's Executors, I. R. 2 C. L. 368.

[3] Attorney-General *v.* Delaney, Ir. R. 10 C. L. 104.

9. Where the net value for Estate Duty, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1000, Legacy Duty is not payable under the will or intestacy of the deceased.[1] This exemption applies to all rates and not merely to the £1 per cent. rate. It should be noted that it does not apply to settled property unless the settlement was by the will of the deceased, and it does not apply unless Estate Duty is payable on the death of the deceased in respect of the property in question. As to what properties passing on the death of the deceased make up the estate not exceeding £1000, see page 74 as to aggregation.

10. Where Estate Duty has been paid, Legacy Duty at £1 per cent. is not payable unless the taxable limits are reached[2] (see pages 178 and 182).

To ascertain whether this exemption applies, two questions must be answered:

*First*—Does the property passing on deceased's death in respect of which Estate Duty is payable (not taking into account the exceptions mentioned on page 178) exceed £15,000?[3]

*Secondly*—Does the total individual benefit taken by the beneficiary from the same testator, intestate, or predecessor, whether as a legacy or a first succession after The Finance Act, 1910, exceed £1000,[4] or, in the case of a widow or infant child, £2000?[5]

[1] F. A. 1894, s. 16 (3).
[2] F. A. 1910, s. 58 (2).
[3] F. A. 1910, s. 58 (2) (*a*).
[4] F. A. 1910, s. 58 (2) (*b*).
[5] F. A. 1910, s. 58 (2) (*c*).

If the answer to both questions is in the negative, or if the answer to the first is in the affirmative and the answer to the second in the negative, Legacy Duty at £1 per cent. is not payable. But if the answer to *both* is in the affirmative, Legacy Duty at £1 per cent. is payable.

11. Where the deceased is domiciled abroad (*i.e.* outside the United Kingdom, not including the Channel Islands or the Isle of Man), Legacy Duty is not payable on any of his personal estate (not including leaseholds), whether situate in this country or not.[1] The rule is that moveable property is considered to follow the person of the owner and for the purposes of Legacy Duty is situated in the country in which he dies domiciled.

Domicil.—The domicil[2] of a person is in general the place or country where he permanently resides or has his home or which is determined to be his permanent home by rule of law. His home is that place or country in which he resides with the intention of residence or with regard to which he retains intention though no longer in fact resident. If he has more than one residence his domicil is the place where he usually resides with his wife and family.[3]

The domicil may be either a domicil of origin or a domicil of choice. The former is the domicil received by a person at his birth: viz., in the case of a legitimate child his father's domicil, or, in the case of an illegitimate child, his mother's domicil. This domicil is retained until such person acquires another by choice.[4] This latter domicil may be acquired by a person leaving

[1] Thomson *v.* Advocate-General, 12 Cl. & Fin. 1.

[2] As to domicil generally, see *Dicey's Conflict of Laws*, 2nd edition.

[3] Forbes *v.* Forbes, Kay 341.

[4] Winans *v.* Attorney-General, [1904] A. C. 287.

the country or state of his domicil of origin and voluntarily taking up his abode in some other country or state with the intention of residing there permanently or indefinitely. So the domicil of a person born in England of parents domiciled there is *ipso facto* English, but if on attaining his majority he elects to emigrate to Australia and settles there with an intention of living there permanently and indefinitely, he loses his domicil of origin and acquires a domicil of choice in Australia. But if he afterwards decides to leave Australia, his domicil of origin would revive,[1] and if he died before acquiring a new domicil of choice his domicil at death would accordingly be English.

An intention to settle in a new country may change a domicil of origin even though naturalization papers are not taken out.

The residence must be freely chosen and not prescribed by necessity, such as the duties of office, the demands of creditors, or relief from illness, and must be general and indefinite in its future contemplation. So the residence of English officials abroad is not a fact from which a change of domicil can be inferred.

The domicil of a married woman is the same as that of her husband, and soldiers and sailors in His Majesty's Service retain the domicil they had on entering the Service, wherever they may be stationed.[2]

There is a presumption against the subject of a Christian country acquiring a domicil in a non-Christian[3] country, but this may be rebutted by strong evidence of intention.

[1] Udny *v.* Udny, L. R. 1 Sco. App. 441.
[2] *Ex parte* Cunningham, 13 Q. B. D. (C. A.) 418.
[3] *In re* Tootal's Trusts, 23 Ch. D. 532.

# CHAPTER XI.

## LEGACY DUTY.—PRACTICE.

THE value of a settled fund for Legacy Duty is its value at the time the duty becomes payable, *i.e.* upon payment or other satisfaction or on retainer for the benefit of the persons entitled.[1]

In the case of a residue, the duty is calculated on the value when payment is made to the persons entitled or the property is retained upon trust.[2] Such payment or retainer is deemed in practice to take place at the date of the residuary account.

The executors are considered to have a year in which to get in the estate and pay legacies and distribute the residue.

LEGACIES.—The duty on legacies is accounted for on *Form No. 1*, which should give the names of the beneficiaries, their relationship to the testator or intestate, and the amount of the bequest. In defining the relationship of a legatee, indefinite terms like "nephew," "niece," or "cousin" should not be used. The correct terms as defined by the Act are given on the back of the account (see also table on page 183). For instance, the description of a "nephew" or "niece" is a "descendant of a brother" or "descendant of a sister of the deceased."

[1] Legacy Duty Act, 1796, s. 13. [2] *Ibid.*, s. 6.

If pecuniary legacies are accounted for within a year, no interest is charged on the duty, otherwise interest is charged from one year from the death. If, however, payment of a legacy is made, whether within the year or not, and the duty is not accounted for within twenty-one days the executors become liable to penalties,[1] but in practice, unless there has been wilful neglect, the penalties may be waived on payment of interest on the duty from the date of payment of the legacy.

In the case of specific legacies the value at the date of transfer or delivery should be accounted for, including, in the case of a legacy which bears income, the accrued income or profits to that date.

Thus if the specific legacy is of stock or shares in a company they should be accounted for at their market value at the date they were transferred to the legatee, with all accrued dividends to that date. The same applies to a bequest of a mortgage debt, share in a business, &c.

Where a pecuniary legacy or fund is settled on persons all liable to the same rate of duty so that Legacy Duty is payable at once on the *corpus*, the Settlement Estate Duty may be deducted in the *No. 1* Account, and Legacy Duty is only charged on the balance.

Annuities.—Where Legacy Duty is chargeable by way of annuity[2] it should be accounted for on *Form No. 2* which, in addition to the particulars given above, should show the date of birth of the annuitant. Where the annuity or income is payable from the testator's death the account is assessed on the basis of the completed age of the annuitant at that date. If Settlement Estate

[1] Legacy Duty Act, 1796, s. 28. [2] *Ibid.*, s. 8.

Duty is chargeable £2 per cent. may be deducted from the annuity. Thus annuity of £40 given to A. for life—

| | £ | s. | d. |
|---|---|---|---|
| Annuity ... ... ... ... ... | 40 | 0 | 0 |
| *Less* Settlement Estate Duty, *i.e.* £2 per cent. on £40 ... ... ... | 0 | 16 | 0 |
| Legacy Duty chargeable on the value of £39 for the life of A., taking his completed age at the testator's death. | 39 | 4 | 0 |

The duty may be paid at once, in which case discount for two and a half years, less the time which has elapsed since the testator's death, will be allowed; or it may be paid by four equal yearly instalments, the first of which is payable at the end of the first year from the death, *i.e.* if payment of the first year's annuity is completed by then. In strictness, the first instalment becomes payable before or on completing payment of the first year's annuity or income, so that where a legacy is settled upon trust for a person for life and the executors require a year in which to get in and invest the estate, the first instalment of Legacy Duty on the life interest would not become payable until the end of the second year.

The two and a half years referred to above is an average arrived at as under:

| | | | | | | |
|---|---|---|---|---|---|---|
| 1st instalment of duty due at end of | 1 | year | from death | | | |
| 2nd | ,, | ,, | ,, | 2 | years | ,, |
| 3rd | ,, | ,, | ,, | 3 | ,, | ,, |
| 4th | ,, | ,, | ,, | 4 | ,, | ,, |
| | | | Total ... | 10 | | |

Average period: two years and six months.

Where there is a direction to purchase an annuity of a fixed amount the duty is payable in full on the value according to the tables and cannot be paid by instalments. The sum actually paid for the purchase of the annuity may be deducted in the residuary account. The annuity to be purchased is the amount given by the will, less duty at the proper rate.[1] Thus if A. directs the purchase of an annuity of £20 for his servant B., aged sixty, the value of the annuity according to the tables, viz., £194 8s. 2d., is first ascertained and duty paid at the rate of £10 per cent.: viz., £19 8s. 9d. The annuity to be purchased is £20, less 10 per cent. £18. Where the annuity is given free of duty, the whole annuity, without reduction, should be purchased.

Residuary Account.—Having accounted for Legacy Duty on the legacies, got in the estate, and paid the debts, the next step is to render a general account showing what the residuary estate amounts to. *Form No. 3* in duplicate should be used for this purpose. As already stated, it should show the value of the residuary estate at the date it is paid over to the residuary legatee or, if settled, the date it is retained upon trust. This date is in practice taken as the date of the account, because no distribution should be made until the duty has been accounted for: otherwise penalties are incurred.[2]

Two columns are given in the account—one for assets which have been realised and one for assets not realised. In the former the actual gross proceeds of sale should be included; in the latter the assets should be included at their value at the date of the account. This value

[1] Legacy Duty Act, 1796, s. 10.

[2] *Ibid.*, Sections 27, 28, & 29.

is not necessarily the same as for Estate Duty, as there may have been a variation in value since the testator's death.

In the case of property not realised, the accounting parties should set a value thereon.[1] Should the Commissioners not be satisfied they may appoint a person to value the property, and the executors, if they consider such value excessive, have rights of appeal. The Commissioners may also value the property or cause a valuation to be made in case there is any dispute between the persons entitled and the executors.

In ordinary cases where the amount involved is small an estimate by the accountable parties is sufficient, but in other cases a professional valuation may be necessary. It need not be stamped unless intended to be used for other purposes and it should be filed with the account. In general the same principles should be applied in arriving at the value of unsold property for Legacy Duty as for Estate Duty. The only difference is that the date for valuing is the date of the account and not the date of death.

Deductions may be taken in the residuary account as follows :—

(1) Estate Duty and interest thereon, excluding Estate Duty on real estate not included in the account, but including Estate Duty on leasehold property. Real estate given upon trust for sale as part of the residuary estate may be included in the residuary account (although the duty payable is, strictly speaking, Succession Duty), and in that case the Estate Duty paid thereon may be deducted. If unsold,

[1] Legacy Duty Act, 1796, s. 22.

the Estate Duty value of real estate and leaseholds may be accounted for, but if in the course of administering the estate a sale has taken place, the sum realised should be accounted for, whatever may have been the value for Estate Duty.

The Estate Duty on gifts *inter vivos* is not a good deduction in a residuary account, for such duty is a charge on the property given,[1] and where paid by the executors is repayable to them by the donee.[2]

Similarly, the Estate Duty on a *donatio mortis causa* may not be deducted. The property included in such a gift does not pass to the executor as such, and the Estate Duty is a charge on the property[3] and is repayable to the executor by the donee.[4]

Again, the Estate Duty on property over which the deceased had a general power of appointment which he did not exercise is not a proper deduction, and if such duty were paid by his executors it is recoverable by them from the trustees of the will creating the power.[5]

(2) Court fees on obtaining probate.

(3) Funeral expenses as in the Inland Revenue affidavit. The amount should be reasonable having regard to the position and means of the testator.

[1] F. A. 1894, s. 9 (1). [2] F. A. 1894, s. 9 (4). [3] F. A. 1894, s. 9 (1).
[4] *Re* Hudson; Spencer *v.* Turner, [1911] 1 Ch. 206.
[5] Porte *v.* Williams, [1911] 1 Ch. 188.

(4) Debts as in the Inland Revenue affidavit.

(5) Testamentary expenses. These include cost of administration and winding up, cost of valuation, brokers' fees, expenses of sale, and expenses of carrying on the deceased's house until it can be closed. Where, however, the house is carried on longer than is strictly necessary for the purpose of administering and is occupied beneficially by relatives, such extra expense is not a good deduction. Where the tenancy has not expired and the executors are unable to re-let the house and the landlord accepts a surrender on payment of a lump sum, such sum and also rent payable up to that date may be deducted.

(6) Where the deceased's will expressly directs a tombstone to be erected over his grave, the cost thereof may be deducted and a deduction for mourning for servants and family may in practice be allowed, provided such expenditure is reasonable having regard to the deceased's position and the amount of his estate.

(7) Legacies and the duty thereon where they are given free of duty by the will. If a legacy is given free of duty and is settled and liable to Settlement Estate Duty, the latter duty may be deducted in the residuary account as well as in the account of the legacy, as the direction in the will is considered to be a further benefit to the legatee not taxable with Legacy Duty.[1]

[1] Legacy Duty Act, 1796, s. 21.

(8) Settlement Estate Duty on a settled residue may be deducted in the residuary account. The Legacy Duty on a settled residue may not, however, be deducted in the Settlement Estate Duty account.

On page 3 of the account should be included all income received between the date of the death and the date of the account, and an apportionment of all income to that date.[1] Thus mortgage interests, profits of business, and rents of real estate included in the account should all be apportioned so that the account shows the exact position of the estate with all accretions to date. In the case of a farm tenancy which is wound up, the amounts realised by the sale of the stock and for the tenant right should be accounted for, while the costs of carrying on the farm until the undertaking is wound up may be deducted. From the total income of the estate may be deducted payments to the date of the account in respect of any annuities given by the will, apportioned interests on mortgages of real estate included in the account, interests on legacies where, for any reason, interest is payable (as where they are given by the will with interest, or payment is not made until more than a year after the death, or where by law they carry interest from the death).

Finally, if annuities are given by the will and the annuitants are in ordinarily good health (as to which a signed statement by a person having knowledge of the facts should be supplied), the value of their annuities will generally be allowed as a deduction and in such cases no further Legacy Duty becomes payable on the death of the annuitants. The deduction should be the value

[1] Attorney-General *v.* Cavendish Wightw., 82.

for the completed age of the annuitant at the date of the account and not at the date of death. Where the deduction of the value of the annuity or annuities would absolutely exhaust the residue, the practice of allowing the deduction of the value would not be permitted. If the value is not deductible, the capital set aside for the annuity or a portion of the estate sufficient to produce the annuity should be deducted, and on the death of the annuitant a supplementary account on *Form No. 3–1* in duplicate should be rendered for Legacy Duty on the then capital value of the property so deducted.

After all proper deductions have been made in the residuary account Legacy Duty is charged on the balance—

(A) Where the residuary legatees take absolutely.

(B) Where the residue is settled and all the legatees are liable to the same rate of duty.

If there has been any considerable delay between the date of the account and the date when it is ready for assessment, interest on the duty is charged for such period.

Where the life tenant and those entitled on his death are liable to different rates, duty must be paid in the first instance by way of annuity. In that case a similar *No. 3* account is rendered, except that no payments that are a charge on income should be deducted, such as interest on Estate Duty or Legacy Duty, and also that income since the death should not be accounted for. To the *No. 3* account should be annexed a *No. 2* account as used for ordinary annuities. This account should show the net annual income produced by the trust estate. Thus the actual income produced

by the unrealised assets should be accounted for. The cash balance, and any property of value but not for the moment producing income, may be accounted for at £4 per cent. interest. In no case should any deduction be taken for Income Tax. The Settlement Estate Duty, where payable, as would in general be the case, may be allowed for by deduction from the cash balance, but if there is not sufficient cash or the duty has been provided for in some other way, £4 per cent. on the duty may be deducted against the annual income. The value of the life interest and the amount of duty thereon is then calculated in the same way as for an ordinary annuity and is payable by the same instalments and is subject to the like conditions as to discount and cesser of instalments not due in the event of the life tenant dying.

On the death of the life tenant duty becomes payable on the *corpus* and should be accounted for on *Form 3–1* in duplicate (see below).

Where Legacy Duty becomes payable on the death of a life tenant, annuitant, or other limited owner, *Form 3-1* in duplicate should be used. It should simply show the value of the trust fund at the date of the death of the life tenant or annuitant. Income since that date should not be included and the investments should be valued at that date without regard to the prices they may have realised on a subsequent sale. Interest on the duty is charged from the death of the life tenant or annuitant.

Where the trustees have power under the will during the life of the life tenant to make advances to the persons entitled on his death (and they can do this without his consent), Legacy Duty becomes payable at the time any such advance is made (subject to a

suitable allowance in respect of any Legacy Duty paid on the life tenant's interest) and if not then paid, interest from such date is chargeable. In general, however, the consent of the life tenant is required, and if Legacy Duty is paid at the date of the advance an allowance can be claimed in respect of the life tenant's interest which is thus given up.

Where a reversionary interest is given as a legacy or included in a residuary estate and the executors wish to dispose of their future liability for Legacy Duty, they are in general permitted to do so provided the life tenant is in ordinarily good health. In such a case they should account for the value of the interest at the date of the account. Thus, suppose A. is entitled to a fund on the death of B. and he predeceases B., giving the reversion to his nephew C. At the date of the account the value of the investments representing the fund is £500, the age of the life tenant sixty, and the income £15:

| | £ | s. | d. |
|---|---|---|---|
| Present value ... ... ... ... | 500 | 0 | 0 |
| *Less* value of £15 per annum for a life aged 60 ... ... ... | 145 | 16 | 1 |
| Value on which Legacy Duty is payable | £354 | 3 | 11 |

The account should be based on the completed age of the life tenant at the date of the account. If the reversion might fall in on the happening of some other event than the death of the life tenant (as, for instance, re-marriage or bankruptcy) only a proportion of the value of the life interest could be allowed, as noted in the case of Estate Duty (see page 161).

If after the residuary account has been disposed of the parties wish to pay the Legacy Duty on a reversionary interest, it may be accepted by the Commissioners by way of commutation, provided the life tenant is in ordinarily good health. In such a case the duty is ascertained as follows :—

| | £ | s. | d. |
|---|---|---|---|
| Present value of the investment, say | 500 | 0 | 0 |
| Duty thereon at £5 per cent. ... | 25 | 0 | 0 |
| Present value of such duty on death of life tenant, aged 67, on a £3 per cent. basis ... ... ... | 18 | 17 | 11 |

If the reversion may fall in earlier (as on re-marriage or bankruptcy, alienation, &c.), the allowance for the life interest would be reduced as already noted. So also if the health of the tenant were precarious the allowance for his life interest would be subject to reduction as determined by the Commissioners, or they might in such a case refuse to accept duty in advance.

Corrections.—Where after Legacy Duty accounts have been rendered it is found they are incorrect they should be adjusted as follows :—Where the value of a legacy or residue is under-estimated owing to an asset being omitted or under-valued, a supplemental account on *Form No. 1* in duplicate for the additional duty should be rendered. If a legacy or share of residue was over-estimated, application for return should be made on *Form H*, duly sworn by the executors and accompanied by the original stamped account. If the relationship was given incorrectly and a different rate of duty is payable, a fresh account for the whole duty should be

rendered showing the correct relationship. The duty already paid will be appropriated in satisfaction or part payment and any balance returned.

Where duty on an annuity or life interest is paid in advance under discount and the annuitant or life tenant dies before all the instalments of duty have become due, application for return should also be made on *Form H*, accompanied by the stamped account. Evidence of the death, such as a death certificate or production of the probate of the will of the deceased beneficiary, may also be required.

Where interest on Legacy Duty is chargeable the rate is £3 per cent.

As to how the forms of account may be obtained and the method of rendering the accounts and paying the duty when assessed, see notes on Estate Duty Practice, Chapter VI., page 163.

# PART III.

## SUCCESSION DUTY.

SUCCESSION Duty was first imposed by The Succession Duty Act, 1853, and is therefore of more recent origin than Legacy Duty. It is a tax on the gratuitous acquisition of property on a death. The person from whom the property is derived is termed "the predecessor," the beneficiary is termed "the successor," and the property he derives is said to be "a succession." The rates of duty depend on the relationship of the successor to the predecessor and, in the case of first successions since The Finance Act, 1910, are—£1 per cent. for lineal issue, lineal ancestors, wives, and husbands; £5 per cent. for brothers and sisters and their descendants; and £10 per cent. for all other relations and strangers in blood.

Succession Duty differs from Legacy Duty in that the former duty may be payable under deeds and other instruments as well as under wills and intestacies, while Legacy Duty arises solely under wills and intestacies (except in the case of *donationes mortis causa*). Legacy Duty also is confined to personal property (excluding leaseholds), while Succession Duty is payable on real estate and leaseholds, and also on personal estate (not including leaseholds) except where Legacy Duty is chargeable. Legacy Duty, again, is not payable

under a will where the domicil of the testator is foreign, but Succession Duty may in such case be payable where the property is settled and it would be necessary to resort to the Courts of this country to execute the trusts.

Before The Finance Act, 1894, Succession Duty was, in the case of real estate, payable on the value of the interest of the successor whether he were merely life tenant or absolute owner, calculated as an annuity according to the tables given in The Succession Duty Act, 1853. But now, where the successor is competent to dispose, the duty is calculated on the capital value of the property itself, as for Estate Duty.[1]

Following the arrangement adopted in the case of Estate Duty and Legacy Duty, Succession Duty will be considered under the following heads:—

1. The Property upon which it is Payable.

2. The Rates and Amount of Duty Payable.

3. The Persons Accountable.

4. Exemptions.

[1] F. A. 1894, s. 18.

# CHAPTER XII.

## THE PROPERTY UPON WHICH SUCCESSION DUTY IS PAYABLE.

SUCCESSION Duty is chargeable under every transfer on death by which a person becomes gratuitously entitled to property.[1]

The person from whom the succession is derived is termed "the predecessor," the person taking the succession is termed "the successor," and the property taken is termed "the succession." The duty is payable at a rate depending on the relationship of the successor to the predecessor on all real and leasehold property and also on all personal property not liable to Legacy Duty.

For the purpose of Succession Duty the term "real property" includes freehold, copyhold, customary, leasehold, and other heritable property, and all estates in such property. The term "personal property" does not include leaseholds but includes money payable under any engagement and all other property not comprised in the above definition of real property.[2] It will be seen, therefore, that for the purpose of this duty leasehold property is on the same footing as real property although, strictly speaking, it is personal property.

[1] Succession Duty Act, 1853, s. 2.

[2] *Ibid.*, s. 1.

The three essential characteristics of a succession are—

(A) A disposition or devolution of property.

(B) A gratuitous acquisition.

(C) A death on which the property is transmitted.

By a *disposition* is meant any act of the owner, whether by deed or other instrument created during his lifetime or by his will, under which an interest accrues on his death. By *devolution* is meant the transmission by act of law of the interest of the owner on any death.

Example of a disposition: A. by deed settles £1000 on himself for life and then on his niece B. absolutely. On A.'s death Succession Duty is payable by B. in respect of her succession to the £1000 derived from A. as predecessor under the disposition made by him.

A devolution arises by act of law, as where a person dies intestate or a tenant in tail dies. Thus if A. dies intestate, his real estate descends to his heir-at-law, who is liable to Succession Duty as on a succession by devolution from A. So if an intestate is possessed of an estate in real property for the life of another person (estate *pur autre vie*) and his heir-at-law becomes entitled as special occupant (unless it is required for payment of debts), Succession Duty is payable by the heir-at-law as on a succession derived from the intestate.

The general rule is that in cases of devolution the last possessor is the predecessor, and the successor pays duty according to his relationship to him.

Entailed Property.—In the case of entailed property, each person expressly named in the entail derives his title from the settlor and the rate of duty is determined by the relationship existing between

them, but a successor who derives his title as being the heir of a person who was himself an heir of the same *stirps* or series is treated as deriving his title by descent from the person last entitled and not from the settlor, and pays duty according to his relationship to such person.

A person who wrongfully takes possession of property on the death of the owner and obtains a title by adverse possession takes a succession by devolution from the person who was last in possession, and is liable to Succession Duty according to his relationship to such person.

The acquisition of the property by the successor must also be beneficial and gratuitous. Transactions for full consideration in money or money's worth are not included.[1] So that if A. by deed for full consideration in money or money's worth conveys a house to B., reserving to himself a life interest, no Succession Duty would be payable by B. on the death of A. because B. has paid a full monetary consideration.

But to escape Succession Duty the consideration must be for money or money's worth.[2] Other considerations, though valuable, would not be sufficient to relieve the property from duty. Thus if A., in consideration of marriage (which is a valuable but not a pecuniary consideration), settles £1000 on himself for life and then on B. for life, Succession Duty will be payable on A.'s death.[3]

It follows from this, that where the consideration for the disposition is only partly monetary, Succession Duty will be payable on the balance, as to that extent

[1] See Succession Duty Act, 1853, s. 7.

[2] Fryer *v.* Morland, 3 Ch. D. 675.

[3] Floyer *v.* Bankes, 3 De. G. J. & Sm. 306.

there is no exemption from Succession Duty. Thus where A., on being taken into partnership with B. in a business valued at £60,000, was given a one-third share, and agreed that in case B. died during the partnership he would purchase his partner's share for £10,000, Succession Duty would be payable on the death of B. on the value of his two-thirds share in the business, less the £10,000 payable by A.[1]

Gifts with Reservation.—Where, however, in transactions of this kind, the successor pays nothing out of his own pocket, he will not be relieved from duty. For example: A. gives £1000 to a charity subject to the payment of an annuity of £30 to himself for life and on his death to his wife for life. It is evident that the annuity is nothing more than the average income of the fund, and nothing really comes out of the donee's pocket. Succession Duty would therefore be payable on the death of A.'s wife on the capital value of the annuity of £30 which then ceased to be payable, in addition to the Estate Duty which, on A.'s death, would be chargeable on the full £1000.[2]

The above is an example of a disposition which is accompanied by a reservation for the benefit of the grantor or any other person for any period ascertainable only by reference to death, and such dispositions are expressly made liable to Succession Duty.[3] This provision does not apply to genuine sales, but was intended to prevent any evasion of duty by an owner giving away property in his lifetime and reserving a life interest to himself, his wife, or other person.

[1] Attorney-General *v.* Brown, 79 L. T. 572.

[2] Attorney-General *v.* Johnson, [1903] 1 K. B. 617.

[3] Succession Duty Act, 1853, s. 7, and Attorney-General *v.* Johnson, *supra*.

The reservation must, however, be enforceable, and therefore if a person effectually gives away property in his lifetime with an understanding, but not an enforceable agreement, that the income is to be paid to him for life, Succession Duty would not be payable. This applies to all gifts made by a person during his life, even though within three years of his death, in which case, as has been explained, Estate Duty would be payable.

Where there is an enforceable reservation and the gift is of personal estate, duty is payable on the increased benefit as a perpetual annuity, which is calculated at twenty-four and two-fifths years' purchase.[1] Thus if A. gives £1250 to B., reserving to himself an annuity of £50 for life, Succession Duty is payable on A.'s death on the value of £50 as a perpetual annuity. According to the tables, this is valued for ninety-five years or about twenty-four and two-fifths years' purchase, and would be worth £1219 17s. 9d. Where an annuity was reserved out of the income of real estate, Succession Duty would presumably be payable on a "slice" of the property sufficient to produce the annuity. If the reservation extended to the whole income of the real estate and the successor were competent to dispose, Succession Duty would presumably be payable on the capital value of the real estate itself as for Estate Duty. In other cases of cesser of annuity charged on real property to which the successor succeeded subject to the annuity before The Finance Act, 1894, Succession Duty would be payable by way of life interest, as the cesser of the annuity is considered to be part of the original succession.

[1] Lord Advocate *v.* McKersies, 19 S. L. R. 438.

If the donee dies before the donor no Succession Duty would be payable on the death of the donor. The property would, however, be liable to Estate Duty as part of the donee's estate, and on the donor's death further Estate Duty would be payable on the increase of benefit to the estate unless it had been accounted for on the donee's death as an expectant interest forming part of his estate.

Where a disposition of property is made to take effect at a period ascertainable only by reference to death, Succession Duty is payable.[1] So also if a disposition is made, and by reason of an enforceable secret trust or arrangement the beneficial ownership in fact devolves on death or at some period ascertainable by reference to death, Succession Duty is payable.[2] And where the Court declares any disposition to have been fraudulent, and made for the purpose of evading duty, it may declare a succession to have been conferred.[3]

The last essential characteristic of a succession is that there must be a *death* on which the property or benefit falls to the successor. Every claim for the duty has to be referred to a death upon which the beneficial acquisition of property took effect.[4] But the liability to duty arises as soon as a succession is created. Therefore any transaction (not being a sale) by which a person may become entitled to property on a death creates a liability to duty, and such liability cannot be got rid of by any subsequent dealings with the property. In the case of a deed the succession is created as soon as it is executed, and in the case of a will, on the death of the testator.

[1] Succession Duty Act, 1853, s. 8. [2] *Ibid.* [3] *Ibid.*
[4] Succession Duty Act, 1853, s. 2.

Although a successor may not become entitled in possession at once, Succession Duty is none the less payable.[1] For example: A. by will gives to B. for life a freehold ground rent of £20. On A.'s death B. pays duty on the £20 for his life. Subsequently, the lease on which the ground rent is dependent falls in. B. is then liable to further Succession Duty on the value of the difference between £20 and the rack rental of the property, his age being taken as at the date when the lease falls in. The succession to the increased rental is still referred to the death of A., although duty is not payable until the actual date when the increased benefit accrues.

Similarly, if A. by will gives real estate to his wife for life, or during widowhood, and then to B., and the widow re-marries, B. is then liable to Succession Duty as on a succession on the death of A. deferred until the re-marriage of the widow.

Joint Property.—Where a purchaser vests property in the joint names of himself and another person to the intent that the donor should receive the whole income during his life and on his death that the other person should become entitled to the property, Succession Duty is payable on the death of the donor on the whole property as on a succession from the donor.[2] And where property is vested in persons as joint tenants, and one of them dies, and the joint tenancy has not been severed so that his share accrues to the survivor, Succession Duty is payable on the share accruing to the surviving joint tenant. In the case of joint tenants a distinction is made between a title which confers a succession and one which does not. If it confers a succession the

[1] Succession Duty Act, 1853, s. 20.

[2] *Ibid.*, s. 3.

predecessor is the person who created the succession. If not, the predecessor is the deceased joint tenant. For instance: A. by will gives a freehold house to B. and C. as joint tenants. On A.'s death B. and C. acquire the property jointly under a title conferring a succession derived from A., and therefore they will pay duty at a rate dependent on their relationship (if any) to A. If B. then dies, C. would succeed to his moiety and pay duty thereon as derived from A. But if B. and C. had bought the property and had it conveyed to them as joint tenants, they would not in such case have acquired it under a title conferring a succession, and therefore if B. died first, C. would pay duty as on a succession derived from B. In the example first given Succession Duty is payable on A.'s death by B. and C. on the capital value of the property; and in both examples, on B.'s death Succession Duty is also payable on the capital value of the moiety accruing to C.

If a joint tenancy is severed before death by agreement or by sale of the property so that it does not pass to the survivor, Succession Duty is not payable under the joint tenancy, but the severable share of the deceased, if not disposed of by him in his lifetime, is of course liable to Estate Duty as part of his free estate.

Policies.—Where a policy of assurance is assigned by way of gift by the assured to a donee and the assured pays the premiums to the date of death, Succession Duty is payable on the death of the assured, and this is so whether the donor has bound himself to pay the premiums or not if in fact he does pay them. But if the premiums are paid by the donee after the assignment, no Succession Duty would be payable.[1]

[1] Lord Advocate *v.* Robertson (or Fleming), [1895] 22 S.S.C. 4th series, 568; [1897] A. C. 145.

Money payable under any engagement is expressly made liable to duty.[1] So where A. covenants in a marriage settlement to pay a sum of money on his death, Succession Duty would be payable on A.'s death.[2] If, however, in a settlement A. had covenanted to pay a sum on his death and in the meantime to pay interest thereon until the capital sum was actually paid, Succession Duty would seem not to be payable if the trusts under the settlement continued, as the payment of the capital sum might be regarded as merely a change of investment.

If a succession is defeated by an earlier title, no Succession Duty would be payable.[3] Thus if leaseholds or freeholds given by will to A. are sold by the executors for payment of the testator's debts, no Succession Duty would be payable by A. because in such case he obtains no benefit from the succession. So also where joint tenants sever the joint tenancy the claim for Succession Duty thereunder on the death of one is defeated.

Where there is a direction to sell in the instrument creating the succession and the property is sold before the death giving rise to the claim for duty, the charge of duty shifts to the proceeds of sale.[4] It is otherwise, however, where a tenant for life and the person entitled on his death combine to sell property. In such case the Succession Duty expectantly payable on the death of the life tenant does not attach to the proceeds but follows the property into the hands of the purchaser who, before completing his purchase, should see that the duty is commuted or otherwise provided for. The duty

[1] Succession Duty Act, 1853, s. 1.

[2] Lord Advocate *v.* Roberts's Trustees, 10 S. S. C. 2nd series, 1016, (20 Dunlop 449), and Attorney-General *v.* Montefiore, 21 Q. B. D. 461.

[3] Attorney-General *v.* Selborne, [1902] 1 K. B. 388.

[4] Dugdale *v.* Meadows, L. R. 6 Ch. 501.

also remains a charge on the property where the trust for sale arises on the death on which Succession Duty becomes payable.

Powers of Appointment.—Where a person has a general power of appointment over real property, the person to whom he appoints the property by will is liable to Succession Duty on the death of the appointor, as on a succession derived from the appointor.[1] The result is the same if the appointment is made by deed during the appointor's lifetime but is not to take effect until his death.[2] Where real property is given by will to a person for life and on his death to such persons as he shall by deed or will appoint, and in default to other persons, Succession Duty is payable on the capital value of the property and not merely on the appointor's life interest, as he is competent to dispose,[3] and further duty is payable under the appointor's will on his exercising the power. If he does not exercise the power and it passes to the persons entitled in default, further Succession Duty is also payable, according to the relationship of such persons to the donor of the power.

Where the power of appointment is limited, *i.e.* where the donee can only appoint to certain persons or to members of a certain class, the appointees are regarded as taking their succession from the person who created the power,[4] and he is regarded as the predecessor and the appointees pay duty according to their relationship to him. In the case of real estate, duty is paid in the first instance in respect of the donee's life interest and

[1] Succession Duty Act, 1854, s. 4, and *re* Wallop's Trusts, 33 L. J. Ch. 351.

[2] Attorney-General *v.* Upton, L. R. 1 Ex. 224.

[3] F. A. 1894, s. 18.

[4] Succession Duty Act, 1853, s. 4.

on his death further duty is paid on the capital value of the property by the persons to whom he appoints, or if he does not exercise his power by the persons entitled in default. Thus A. by will gives real estate to B. for life and on his death to the children of C. in such shares as B. shall appoint. On A.'s death B. pays duty on the value of his life interest and on his death further Succession Duty is payable by the children to whom he appoints as on a succession derived, not from B., but from A. who created the power.

The devise of real estate to a child or other issue of the testator who dies before him, leaving issue, is preserved from lapse by Section 33 of The Wills Act, 1833. The deceased devisee and not the original testator is accordingly regarded as owner of the property for the purpose of Succession Duty, and the succession is attributed to the deceased child as predecessor.

Cesser of Outstanding Interests.—Where property is subject to any charge, estate, or interest determinable on death (such as a dower interest, jointure, rent charge, or annuity), the increase of benefit accruing on the extinction or determination of the charge is deemed a succession derived from the person from whom the successor derived his title.[1] For example: A. by deed gives property, subject to an annuity of £50 to C., to B. On the death of C. in B.'s lifetime, Succession Duty would be payable on the cesser of his annuity as derived from A. This does not apply to an annuity or terminable charge created by the owner of property where such annuity or charge ceases on a death during his lifetime.[2] The successor

[1] Succession Duty Act, 1853, s. 5.

[2] *Ibid.*, s. 12.

in such a case is his own predecessor and therefore Succession Duty is not payable. Nor does it apply where the transaction is based on full consideration in money or money's worth.

The above provision deals with duty in respect of an outstanding charge where the *property* itself may not be liable to duty. Supplementing this, provision is also made for a *succession* which is subject to such a charge. For where a *succession* is subject to any prior charge, estate, or interest not created by the successor himself by reason whereof he does not at once become entitled to the full enjoyment of his succession, it is provided that duty is to be paid on the increased value accruing on the determination of such charge, estate, or interest at the time of such determination. But no duty is to be paid on the determination of any lease at a rack rent.[1] This generally applies where the successor takes for life, and some annuity, jointure, or other charge, not created by him, is in existence when he succeeds. In such case he deducts in his account the annual equivalent of the annuity, jointure, or charge and on the cesser thereof renders a supplemental account. The duty on the supplemental account is subject to the same provisions as to discount and payment by instalments as the duty payable on the original account. Thus on the death of A., B. succeeds for life to real property, subject to a jointure created by a predecessor in title in favour of C. B. renders his account on the death of A. and deducts the jointure against the annual value of the property. On the death of C. he renders a supplemental account for duty on the further benefit

[1] Succession Duty Act, 1853, s. 20.

accruing to him by the cesser of her jointure. Similarly, where a successor succeeds to freehold ground rents for life, he pays duty on the value for his life of the ground rent and when the lease falls in he renders a supplemental account for the difference between the then annual value of the property and the ground rent, his age being taken at the date when the lease terminated.[1] If, however, the successor sells the property and dies before the annuity or lease has fallen in, no Succession Duty would be payable on the death of the annuitant or the falling in of the lease.

Where the charge was created by the successor himself before he became entitled in possession to his succession, he could not make any deduction in his account unless the charge were created in such a way as to create a new succession.[2]

Successions to Ground Rents.—Where real property is subject to a lease and the successor for life has not therefore paid duty on the full yearly value, he is chargeable with duty upon his interest in any fine or other consideration which may be received for the renewal of such lease or the grant of any reversionary lease.[3] For instance, before the lease falls in, a successor may agree to renew it or to grant a reversionary lease at the same rent but subject to payment of a lump sum. In such case, further Succession Duty is payable on his interest in such sum.

Where the successor takes an absolute interest in real estate, it should be borne in mind that duty is payable on the capital value of the property,[4] and in the case of ground rents the then value of the increased

[1] Attorney-General *v.* Mander, 65 L. J. Q. B. 246.

[2] See Succession Duty Act, 1853, s. 20, and *re* Peyton, 7 H. & N. 265.

[3] Succession Duty Act, 1853, s. 25.

[4] F. A. 1894, s. 18.

benefit to accrue on the determination of the lease is in all cases included in the valuation of the property. The duty paid, therefore, covers both the value of the ground rent and the reversion expectant on the determination of the lease and a further account is not necessary on the lease falling in. Similarly, in the case of property which a successor takes absolutely subject to an annuity or rent charge, if the value only of the annuity or rent charge is deducted against the capital value of the property and duty paid on the balance, no further duty is payable on the cesser of the annuity or rent charge. But if deduction is taken in the original account for a capital sum or "slice" sufficient to produce the annuity or rent charge, then further Succession Duty will be payable when such charge terminates in respect of the deduction so made.

Where mortgages on settled property are paid off by the tenant for life or are released by the encumbrancer for the benefit of the persons entitled under the settlement, the tenant for life or encumbrancer is to be regarded as the predecessor to the extent of the beneficial interest attributable to the extinction of the mortgages or charges so paid off or released.

Where a successor derives his succession from more predecessors than one and the interest derived from each cannot be distinguished, the Commissioners may agree with the successor as to the duty payable, and in default of agreement the successor shall be deemed to take equally from each predecessor.[1]

Foreign Property.—It has already been shown that Legacy Duty is not payable on the personal estate (not including leaseholds) of a person who dies domiciled abroad, whether such personal estate is situate in this country or

[1] Succession Duty Act, 1853, s. 13.

not (see page 173); neither is Succession Duty payable in such circumstances,[1] but this freedom from duty only applies to absolute gifts which are satisfied by the process of administration. Where moveable property is settled, whether by deed or will, Succession Duty may be payable on subsequent deaths. In such cases the claim depends upon one or other of the following circumstances :—

(1) The settlement is in British form.

(2) The trustees are resident in this country.

(3) The forum of administration is in this country.

It is immaterial whether the testator or settlor is a foreigner or an Englishman, whether he is domiciled in this country or not, or whether the property is situate in this country or not.

Thus A., a testator domiciled abroad, gives personal estate to trustees resident in this country upon trust for A. for life and on his death to B. absolutely, and directs his trustees to invest the property in British securities. Neither Legacy Duty nor Succession Duty is payable on A.'s death, his domicil being foreign. But if on the death of B. it is found that the property is invested in this country in the names of the trustees resident here, Succession Duty is payable.[2] For to obtain possession of it the beneficiaries, whether foreigners or not, would have to resort to the Courts of this country. The result would be the same even though there were no direction to invest the property in British securities if, in fact, at the death of B. the property were so invested.[3]

[1] Wallace *v.* Attorney-General, L. R. 1 Ch. App. 1.

[2] Attorney-General *v.* Campbell, L. R. 5 H. L. C. 524.

[3] Thompson *v.* Birch, [1876] W. N. 177, 278.

In the case of deeds and settlements, a similar principle applies. If the beneficiaries, whether aliens or not, become entitled on a death under a British settlement to property vested in British trustees, Succession Duty is payable, and this is so whether the property is situate in this country or not. Thus A., domiciled abroad by deed made in English form, settled securities of a foreign government upon himself for life and then upon his children, and appointed trustees resident in this country. On the death of A., his children who were domiciled abroad succeeded, and Succession Duty was payable as the settlement fell to be construed by the English Courts, and the trustees being resident here the beneficiaries could only compel the trustees to transfer the securities by resorting to such Courts.[1]

Similarly, if at the death the property, originally foreign, is found to be invested in the names of the trustees resident here, Succession Duty is payable. But if the *only* British element is the fact that on death of a life tenant the settled funds are under the control of the British Court, Succession Duty would not be chargeable.

Where the deceased, even though a domiciled foreigner, has a general power of appointment over personal property under an English settlement made by deed or will, the principles as set out above do not exactly apply, for the appointment in such case is read into the instrument creating it, and in effect the beneficiaries become entitled under such instrument. The fund appointed is not technically the property of

[1] *Re* Cigala's Settlement Trusts, 7 Ch. D 351, and see Attorney-General *v.* Felce, 10 T. L. R. 337, and Attorney-General *v.* Jewish Colonization Association, [1901] 1 K. B. 123.

the deceased; he has only a power of disposition over it and the beneficiaries become entitled under a British settlement and, even though the appointor is domiciled abroad, Succession Duty is payable.[1]

The above remarks do not apply to real estate or leaseholds. No such property situate abroad is liable to Succession Duty even though the owner is domiciled here or it passes under an English settlement. But if it is situate in this country it is liable to Succession Duty whether the owner dies domiciled abroad or whether it is vested in foreign trustees under a foreign settlement or not. Where, however, foreign immoveable property is settled by an English instrument upon trust for sale and on any death it is found vested in trustees resident in this country, Succession Duty would be chargeable even though no sale had in fact taken place.[2] The settlement is in fact of equitable personal property, and the succession is therefore not to foreign immoveable property, but to an English *chose in action*.

[1] *Re* Lovelace, 4 De G. & J. 340, and *re* Wallop's Trusts, 33 L. J. Ch. 351.
[2] Attorney-General *v.* Johnson and Others, [1907] 2 K. B. 885.

# CHAPTER XIII.

## THE RATES AND AMOUNT OF SUCCESSION DUTY

THE rates of Succession Duty now payable[1] are as follows :—

I.

| Relationship of Successor to Predecessor. | Rate. |
|---|---|
| Husband or wife, children, and their lineal descendants, including the husband or wife of any such person. Father or mother or any lineal ancestor ... | £1 per cent. |
| Brothers and sisters and their descendants and the husband or wife of any such person ... ... ... ... ... | £5 per cent. |
| Persons in any other degree of collateral relationship and strangers in blood, including those related only by natural ties ... ... ... ... ... | £10 per cent. |

II.

It may happen, however, in certain cases that Estate Duty is not payable on the property liable to Succession Duty and in such cases the above rates would be increased to £1 10s. per cent., £6 10s. per cent., and £11 10s. per cent.[2]

The revised rates given in the first table were established by The Finance Act, 1910, and it may happen that an

[1] Succession Duty Act, 1853, s. 10, as amended by F. A. 1910, s. 58.
[2] See 51 Vict. c. 8, s. 21 (1), and F. A. 1894, s. 1 (1st Schedule).

expectant succession has been sold before that Act came into operation: viz., 30th April, 1909. It is therefore provided in such a case that the purchaser is not to be subject to any additional burden imposed by The Finance Act, 1910, and he is therefore liable only to pay the duty at the rates formerly in force.[1] They were as follows[2]:—

III.

| Relationship of Successor to Predecessor. | Rate. |
|---|---|
| Children and their lineal descendants, or the husband or wife of any such person. Father or mother or any lineal ancestor (*This rate was not payable on property on which Estate Duty had been paid.*)[3] | £1 per cent. |
| Brothers and sisters and their descendants or the husband or wife of any such person ... ... ... ... ... | £3 per cent. |
| Brother or sister of the father or mother or their descendants or the husband or wife of any such person ... ... | £5 per cent. |
| Brother or sister of a grandfather or grandmother or their descendants or the husband or wife of any such person | £6 per cent. |
| Persons in any other degree of relationship and strangers in blood including persons related only by natural ties | £10 per cent. |

Where Estate Duty was not payable these rates were increased by £1 10s. per cent., except the £1 per cent. duty, which was increased to £1 10s. per cent.[4]

[1] F. A. 1910, s. 64. [2] Succession Duty Act, 1853, s. 10.
[3] F. A. 1894, s. 1, 1st Schedule 5th paragraph. [4] 51 Vict. c. 8, s. 21 (1).

The £1 per cent. duty referred to in Table I. is only payable in certain cases.

Where the principal value of the property passing on the death of the deceased (*i.e.* the testator, intestate, or donor *mortis causa*, or, in the case of a devolution,[1] the person on whose death a succession arises, or, in the case of a disposition,[2] the person on whose death the *first* succession arises) in respect of which Estate Duty is payable (except property in which the deceased never had an interest and property of which the deceased never was competent to dispose and which on his death passes to persons other than the husband or wife or a lineal ancestor or descendant of the deceased) does not exceed £15,000, whatever may be the value of the legacy or succession,[3] Succession Duty at £1 per cent. is not payable.

For the purpose of ascertaining whether this limit is exceeded, only property liable to Estate Duty passing on the death giving rise to the claim for Succession Duty (with the exceptions referred to above, and apparently also except property in which the *first* succession under a *disposition* arose before the 30th April, 1909) has to be taken into account. For example: suppose on A.'s death the following properties pass to his widow and children:—

| | £ |
|---|---|
| (1) His free estate, value ... ... ... | 3000 |
| (2) Property settled by A. on his marriage on himself for life, value ... ... | 8000 |
| Brought forward ... | £11,000 |

[1] See page 238 as to the meaning of the terms "disposition" and "devolution."

[2] *Ibid.*

[3] F. A. 1910, s. 58 (2) (*a*).

| | £ |
|---|---|
| Carried forward ... | 11,000 |
| (3) Property settled by the will of his father on which Estate Duty was paid on the death of the father, value ... | 16,000 |
| (4) Policy in the Customs Fund, value ... | 200 |
| Total ... | £27,200 |

The total exceeds £15,000, but No. 3 is not to be taken into account as Estate Duty is not again payable on A.'s death. No. 4 may also be disregarded as the policy moneys constitute property in which the deceased never had an interest. The total value to be taken into account is £11,000 and therefore Succession Duty at £1 per cent. is not payable on A.'s death by his wife or children.

It is not necessary that the property chargeable with Succession Duty at £1 per cent. should itself be liable to Estate Duty, provided the limit of £15,000 is otherwise exceeded. For instance, suppose on the death of A. her free estate amounted to £30,000 and she was entitled to a dower interest under the intestacy of her husband who died in 1896 in his real estate value £60,000. Her dower interest would extend to $\frac{1}{3}$—£20,000, but no Estate Duty would be payable on her death because such duty would have been paid at the death of the husband. Notwithstanding this, Succession Duty at £1 per cent. would be payable by the heir-at-law in respect of the £20,000 because the property passing on A.'s death and liable to Estate Duty, *i.e.* her free estate, exceeded £15,000. If, however, the succession had arisen under a *disposition*, *e.g.* the

husband's will, and not under a devolution, Succession Duty would not be payable for the *first* succession thereunder, viz., that of the widow, would have taken place before 30th April, 1909.[1]

In ascertaining whether the limit of £15,000 is exceeded, property in which the deceased never had an interest is not to be taken into account nor is property of which the deceased never was competent to dispose which passes on his death outside his immediate family, even though in each case such property is liable to Estate Duty.

The above provision fixes generally when the £1 per cent. Succession Duty is not payable at all but a successor may also be relieved by reason of his *individual* benefit not amounting in value to a certain sum even though the limit of £15,000 is exceeded, as follows:—

(1) Where the amount or value of the legacy or succession with any other legacies or successions derived by the same person from the testator, intestate, or predecessor does not exceed £1000 whatever may be the principal value of such property[2]; and

(2) Where the beneficiary is the widow or an infant child (but not an infant grandchild) and the amount or value of the legacy or succession with any other legacies or successions derived by the same person from the testator, intestate, or predecessor does not exceed £2000 whatever may be the principal value of the property; Succession Duty at £1 per cent. is not payable.[3]

[1] F. A. 1910, s. 58 (3) & (4).
[2] F. A. 1910, s. 58 (2) (*b*).
[3] F. A. 1910, s. 58 (2) (*c*).

It will be observed that the test of exemption is the value of the total *individual* benefit whether as a legacy or succession derived from the same person, so that if a child is given merely a life interest in property worth £3000, and the value of such interest according to the tables in The Succession Duty Act, 1853, does not amount to £1000 (or to £2000 if he is under twenty-one), Succession Duty is not payable by that successor.

Again, if in the above instance the property were worth £9000 and were given on the death of the child to his children as he should appoint, Succession Duty would be payable on the value of his life interest if over £1000, and on his death each grandchild would only be liable to duty if his share were over £1000, so that until the death of the life tenant it cannot be determined what may be the liability of each grandchild as he may have less than £1000 appointed to him.

If in the above instance a grandchild took an immediate benefit which did not exceed £1000, payment of duty thereon could not be required until the further benefit (if any) raised the total value to over £1000. It would, however, be open to the beneficiary to pay duty on the immediate benefit subject to discount being allowed and subject also to his right to recover the duty should the total benefit ultimately not exceed £1000.

It will be observed that all benefits derived by the same beneficiary from the same testator, intestate, or predecessor on the death must be taken into account. Thus, if on the death of A., a son aged thirty takes £600 under a marriage settlement made by A., and a legacy of £500 under A.'s will, the £600 would be liable to Succession Duty at £1 per cent. under the settlement

and the legacy to Legacy Duty at £1 per cent. under the will (*i.e.* assuming that the £15,000 limit were exceeded), as together they exceed £1000.

Again, assume that the £600 is subject to the widow's life interest, which is exempt by reason of her total benefit not exceeding £2000: Succession Duty would still be payable, but not until the death of the widow, and if the Legacy Duty is paid on the immediate legacy given by the will, discount during the widow's life could be claimed.

Succession Duty at £1 per cent. is not payable under wills or dispositions where the *first* successions arose before The Finance Act, 1910, was passed, and it may be that in calculating the "individual benefit," legacies under the will or intestacy of a person who dies before that date and successions under dispositions under which the first succession arose before that date may be disregarded.[1]

In the case of a will the first succession arises on the death of the testator. In the case of other dispositions, the first succession arises on the death of the first life tenant in possession, whether Succession Duty was payable or not (*i.e.* where the husband or wife of the predecessor succeeds, Succession Duty would not have been payable). In the case of a devolution, *e.g.* an intestacy, it is immaterial whether the succession is a first succession or otherwise; any succession arising after the 30th April, 1909, has to be taken into account.[2]

Thus if A., who dies before the 30th April, 1909, by deed settles £20,000 on himself for life, and then on his wife for life, and then equally among his four

[1] F. A. 1910, s. 58 (3) & (4). [2] F. A. 1910, s. 58 (4).

children, no Succession Duty would be payable by the children on the death of the widow after the above date because the first succession, *i.e.* that of the widow on A.'s death, took place before the above date. But if he had died intestate, leaving real estate in one third of which the widow took a dower interest, the succession of the eldest son on her death cannot be disregarded for the purpose of the £1 per cent. rate because, although not a first succession, it is a succession under a devolution and not under a disposition.

The £5 per cent. duty is payable by brothers and sisters of the settlor and their descendants, but is subject to the like qualification above as to the first succession. Therefore, if real estate is settled by A. by deed on himself for life (he dies before the 30th April, 1909) and then on his nephew B. for life (he dies after the 30th April, 1909), and then on B.'s children. Succession Duty is payable on the death of B. at the old rate, viz., £3 per cent., as the first succession under the disposition arose before the 30th April, 1909.

All successors more distantly related, such as cousins and those connected by natural ties but born out of wedlock, are liable to the same rate as strangers in blood to the predecessor, except that where the first succession under a disposition arose before the 30th April, 1909, successors who take on a death after that date are liable only to the rates in force before the 1910 Act (see Table III., page 255).

Neither the £5 per cent. nor the £10 per cent. rate is affected by the exemptions which apply to the £1 per cent. rate where the property passing does not exceed £15,000 or the total individual benefit does not exceed £1000 or £2000.

COMPROMISES.—If there is a conflict between claimants to a deceased person's real property and a compromise is arranged, the claim for Succession Duty does not follow the compromise but is payable in accordance with the rights of the parties as determined by the title which is allowed to stand.[1] As regards compromises relating to personal estate, see page 191 as to Legacy Duty. Similar remarks apply to Succession Duty.[2]

BASIS OF CALCULATION.—Succession Duty is calculated in two ways—(A) Where the successor is entitled to an absolute interest or is competent to dispose as he thinks fit, on the capital value of the property, and (B) Where he is entitled to less than an absolute interest on the actual value of such interest calculated according to certain tables in The Succession Duty Act, 1853. These tables are based on the average expectancy of life and interest is taken at £4 per cent.

(A) *Where the successor is entitled to an absolute interest.* A distinction must be made between real and leasehold property and other property.

In the case of real and leasehold property, Succession Duty is payable on the capital value as for Estate Duty, after deducting Estate Duty (except in the case of leaseholds under a will) and the expenses of raising and paying the same.[3] The duty may be paid by the same instalments as for Estate Duty, viz., eight yearly or sixteen half-yearly instalments, the first being payable at the expiration of one year from the death, and if the duty is paid within that time discount is allowed, except where the property is sold, in which case the duty is payable in full as from the date of completion

[1] Lord Advocate *v.* Gordon, [1895] 32 S. L. R. 532.

[2] Succession Duty Act, 1853, s. 32, incorporating Legacy Duty Act, 1796, s. 23.

[3] F. A. 1894, s. 18.

of the sale. After the expiration of the year, interest is payable on the duty for the time being unpaid.

Where there is a direction to sell real and leasehold property, Succession Duty is payable as on a succession to personal property[1] (see *infra*), and the duty cannot be paid by instalments.

It should be noted that the Estate Duty, and Settlement Estate Duty (where payable), on real estate are a charge on the property[2] and are payable by the beneficiary and are both deductible in the succession account, but in the case of leasehold property under a will Estate Duty is not a charge on the property but is payable by the executors out of the residuary estate.[3] It is not, therefore, deductible in the succession account. Settlement Estate Duty, however (where payable), is a charge in both cases and may be deducted in a succession account of leaseholds. Should there be a direction in the will that the gift is to be free of duty, the duties may still be deducted as above, as the direction is regarded as a further benefit not taxable with Succession Duty. They may also be deducted against the residuary personal estate. Where the duties are not payable under the will of a testator, but under a deed or some other disposition, they may be deducted against leaseholds as well as real estate, because the leaseholds do not in such a case constitute property passing to the deceased's executor as such and the Estate Duty is therefore a charge thereon.[4]

Should the successor elect to pay by instalments and die before all the instalments are paid, the unpaid instalments remain a charge on the property[5] and are

[1] 51 Vict. c. 8, s. 21 (1).
[2] F. A. 1894, s. 9 (1).
[3] *Re* Culverhouse; Cook *v.* Culverhouse, [1896] 2 Ch. 251.
[4] F. A. 1894, s. 9 (1).
[5] See F. A. 1894, s. 18 (1).

payable by the succeeding owner as well as any further duties payable in consequence of the successor's death. In practice, this does not apply to a tenant in tail who dies before all instalments are paid and the unpaid instalments are not claimed.[1]

Agricultural Property.—Formerly, in the case of property which was purely agricultural, the value for Succession Duty was limited to twenty-five times the gross assessment to property tax under Schedule A, after deducting from such assessment necessary outgoings such as repairs, insurance, &c., and expenses of management not exceeding £5 per cent.[2] This limitation was provided because agricultural property sometimes had a fictitious value owing to extraneous circumstances, such as being near sporting estates, and it was thought unfair to charge Succession Duty on the full value in such cases. Now, however, Succession Duty is in all cases, where the successsor is competent to dispose, payable on the full market value,[3] except that where there are labourers' cottages (occupied by persons employed solely for agricultural purposes), which have a special value owing to their suitability as country cottages for townspeople or others, such special value has to be disregarded.[4]

Timber.—As has been explained in the case of Estate Duty, where the property includes land on which timber, trees, or wood are growing, Succession Duty is to be paid on the net sums, after deducting Estate Duty and necessary outgoings, which may from time to time be received from the sale of the timber, &c., when felled, until the property again becomes liable to Succession Duty by a

[1] See Succession Duty Act, 1853, s. 21.
[2] F. A. 1894, s. 18 (2).
[3] F. A. 1910, s. 60 (1).
[4] F. A. 1911, s. 18.

further death.[1] Interest at £3 per cent. is payable on the duty from the date when the moneys are received. If, however, such timber, trees, or wood are sold *en bloc* either with or apart from the land, Succession Duty is payable at once on the principal value, but the Succession Duty paid already may be deducted from the total duty payable on such sale.[2] Necessary outgoings include expenses of selling, felling, and carting, restoring fences, ditches, gates, &c., if borne by the vendor, expenses of forestry for the year in which the sale takes place and also expenses of replanting timber sold and felled on a timber estate. The Commissioners have no power to insist upon payment of the duty in full by way of commutation, but, by arrangement, payment may be made upon the value at the death, and in that case, periodical accounts would not be required. Moneys realised from the sales of underwood, when cut, are not apparently liable to Succession Duty.

In the case of personal property, other than leaseholds, where the successor takes an absolute interest, Succession Duty is payable on the same value as for Estate Duty, subject to a deduction for Estate Duty. The duty is payable in full as from the death and cannot be paid by instalments, and interest is charged on the duty from the death. Duty is payable in the same way in the case of real and leasehold property directed to be sold even though a sale may not have taken place.

As in the case of legacies given to persons in succession, all liable to the same rate of duty, Succession Duty is also payable on the *corpus* of personal estate where the successor does not take absolutely, but the property is settled upon persons liable to the same

[1] F. A. 1912, s. 9.

[2] See F. A. 1910, proviso to s. 61 (5).

rate of duty.[1] For example: A. by deed dated June, 1900, settles £4000 on himself for life, and then on his niece B. for life, and on her death on her husband C. for life, and on the death of the survivor on their children equally. On the death of A. in June, 1912, as all the beneficiaries are liable to the same rate of duty, Succession Duty would be assessed at £5 per cent. on the *corpus* of the £4000, after deducting Estate Duty and Settlement Estate Duty. No further Succession Duty would then be payable on the death of B. or C.

(B) *Where the successor takes for life or limited interest.* In these cases the interest of the successor is capitalized according to his expectancy of life at the date when he becomes entitled in possession. The net annual value which the successor may be expected to receive from the property is ascertained, and the capital value of same is calculated by reference to the tables given in the Succession Duty Act, 1853, on the basis of his completed age at the time he becomes entitled in possession. If his interest is for the joint lives of himself and another, the value is calculated according to Table II. If his interest is not for life but for a limited period, then the value is calculated for that period as for so many years certain according to Table III. No allowance is made for any contingency upon the happening of which the property may pass to some other person, but if the event does happen, the successor is entitled to a return of so much Succession Duty as would reduce it to the amount he would have paid if the duty had been assessed in respect of the actual duration of his interest.[2] Thus if B. succeeds to property

[1] Succession Duty Act, 1853, s. 32, incorporating Legacy Duty Act, 1796, s. 12.

[2] Succession Duty Act, 1853, s. 36.

for her life or until she re-marries, Succession Duty in such cases is assessed on the value of the net income from the property for her life without regard to the contingency of re-marriage. If, however, she does re-marry, a re-calculation has to be made. For instance, suppose the net annual value is £50 and A.'s age at the date she succeeds is forty. Succession Duty would be payable on £743 15s., that being the value of an annuity of £50 for a life aged forty. At forty-five A. re-marries, so that her interest determines after five years. The value of such interest for five years certain would only be £222 11s. 9d. and therefore she would be entitled to a return of Succession Duty on the difference between £743 15s. and £222 11s. 9d.

Again, if A. succeeds for life to property worth £100 per annum, subject to an annuity of £50 to B. on his attaining twenty-one, duty is taken in the first instance on the

| | £ s. d. | £ s. d. |
|---|---|---|
| Value of the £100 per annum for the life of A. without regard to the contingency of B. attaining twenty-one ... | | 1242 19 6 |
| If, however, B. attained twenty-one, say after ten years, the actual duration of A.'s interest would have been £50 per annum for his whole life ... | 621 9 9 | |
| And £50 per annum for ten years certain, per Table II. | 405 10 9 | |
| Total on which Succession Duty is payable | | 1027 0 6 |
| And Succession Duty would be returnable on the difference ... ... | | £215 19 0 |

Succession Duty would also be payable on the value of B.'s annuity of £50, which became payable on his attaining the age of twenty-one.

In the case of personal estate, the actual income produced by the property without deduction for income tax should be accounted for. Deduction may be taken for £4 per cent. on the Estate Duty, and on the Settlement Estate Duty (where payable). The duty is payable by four equal yearly instalments, and if the successor dies before all are payable the instalments which had not become due are not payable.[1] If duty is paid in full, discount for two and a half years, less the time which has elapsed since the death, is allowed. Payment in full does not prejudice the right to claim a return of duty should the successor die before the period for payment by instalments has expired. It will be noted that the Succession Duty in such cases is payable in a similar way to Legacy Duty, which is chargeable by way of annuity, and the provisions as to assessment of Legacy Duty are in fact incorporated into The Succession Duty Act, 1853.[2]

As already explained, where a successor takes for life and those entitled on his death are liable to the same rate of duty, the Succession Duty is assessed at once on the *corpus* of the fund and not by way of annuity.

In the case of real estate and leaseholds the gross annual value should first be ascertained,[3] and this is defined as the annual rent which a tenant might reasonably be expected, taking one year with another, to pay, if the tenant undertook to pay all usual tenant's rates and taxes and the landlord undertook to bear the cost of repairs, insurance, and other expenses (if any) necessary to maintain the property in a state to command that rent.

[1] Succession Duty Act, 1853, s. 32.
[2] *Ibid.*
[3] Succession Duty Act, 1853, s. 21.

From this gross value, necessary outgoings, excluding tenant's payments but including insurance, repairs, and other payments by the landlord, are deducted.[1] In practice, the net annual value is generally determined from the actual rent at which the property is let, or if it is not let, the *gross* assessment to property tax or, if not assessed, the *gross* assessment to poor rate, after deduction of all annual outgoings paid by the owner as above. Where, however, repairs are paid by the tenant, as in the case of a repairing lease, they may not be deducted, nor may rates as a general rule, except where, in the case of small property, they are paid by the owner. Where the account is based on the gross assessment to property tax, tithe rent charge is not in general a good deduction, as it is usually separately assessed, and therefore allowed for in the gross assessment. In no case should income or property tax be deducted in a succession account.[2]

£4 per cent. on the Estate Duty (except in the case of leaseholds under a will) and on the Settlement Estate Duty may be deducted. Deduction may also be taken for annuities or rent charges or jointures, and £4 per cent. on legacies charged on the property, and, if the testator's personal estate is deficient, £4 per cent. on the amount of the deficiency.

In the case of copyholds, a further deduction may be taken in respect of any fines, fees, or other payments incident to the tenure and payable on the death to the lord of the manor.[3] The proper deduction is the annual sum which for the life of the successor, or for such shorter period as the successor's interest may continue, would equal in value the amount of such payments. Thus, suppose the successor's age were

[1] Succession Duty Act, 1853, s. 22.

[2] *Re* Elwes, 3 H. & N. 719.

[3] Succession Duty Act, 1853, s. 28.

forty-eight, and the payments for fines amounted to £25: the equivalent annual value, according to the tables, would be £1 18s. 6d., and that sum could be deducted in the account.

Allowance is also to be made for all encumbrances, except those created or incurred by the successor, and also in respect of any moneys which the successor before possession may have laid out in substantial repairs or permanent improvements of the property comprised in the succession.[1] These would not include payments for repairs and the ordinary annual upkeep of the property, as the tenant for life is liable for such payments. In the case of a mortgage, the interest annually payable would be deductible from the annual value; and in the case of moneys spent in improvements, £4 per cent. on the sum expended.

The duty is payable as follows:—

(A) By eight equal half-yearly instalments, the first payable at the end of a year after the successor becomes entitled, and the others at half-yearly intervals from the day on which the first instalment became due[2]; or

(B) By two moieties, whereof the first is to be paid by four equal yearly instalments, commencing one year after the successor became beneficially entitled, and the second moiety on the day for payment of the last instalment of the first moiety; or, if not so paid, shall be payable by four yearly instalments, with interest, from the last-mentioned date[3]; or

(C) In full, under discount.[4]

[1] Succession Duty Act, 1853, s. 34. [2] *Ibid.*, s. 21.
[3] 51 Vict. c. 8, s. 22 (1).
[4] Succession Duty Act, 1853, s. 40, and 51 Vict. c. 8, s. 22 (2).

If the successor dies within four and a half years, the half-yearly instalments not due cease to be payable.[1]

It will be observed that by method (A) the duty should be completely paid at the end of four and a half years, and that by method (B) it should be paid by the end of four years. If in the latter case payment is not complete, the successor may continue to pay by instalments, but he must then pay interest on the duty for the time being unpaid.

He may also, if he chooses, pay in full under discount. In such case discount is allowed for three years three months, less the time which has elapsed since the death giving rise to the claim. If he dies before all the instalments, if paid half-yearly, would have become payable, application may be made for a re-calculation and a return of the instalments which have ceased to be payable.[2]

In the case of leasehold property, where the term is short, it is manifest that it would be unfair to the successor to base the account on the annual value, and in such cases the principal value should be shown, and the duty is then assessed on the value according to Table II. of an annuity for the joint lives of the successor and an imaginary life at which the annual value is equivalent to the principal value of the property.

It follows, from the fact that duty is calculated on the annual value, that where at the time the successor becomes entitled in possession the property is not capable of producing any income and has no saleable value, no duty is payable.[3] If, however, the property has a saleable value, duty is payable on the basis of an income at the rate of £3 per cent. on such value.[4]

[1] 51 Vict. c. 8, s. 22 (3) (*b*). [2] *Ibid.*
[3] Attorney-General *v.* Sefton, 11 H. L. C. 257. [4] *Ibid.*

Where the succession includes timber, trees, or wood, it is evident that it cannot be included in an ordinary assessment on the annual value. The Succession Duty in respect thereof is now payable on the capital sums from time to time received on sale, after deducting all necessary outgoings as described in the case of a successor who was competent to dispose.[1] If, however, a part of the receipts from timber sales is retained by the trustees of the settled property and invested as capital moneys, Succession Duty would presumably only be payable on the life interest of the successor therein.

In the case of an advowson or Church patronage, no Succession Duty is payable unless and until a sale takes place, in which case Succession Duty is payable on the proceeds of sale.[2]

As regards manors, opened mines, or other real property where the income fluctuates, it is provided that duty may be paid either on the basis of the average actual income after deducting necessary outgoings during such a number of years preceding the time when the first payment of duty is due as may be agreed upon between the successor and the Commissioners, or if no such period can be agreed upon, the principal value of the property is to be ascertained and the annual value is to be taken at £3 per cent. interest thereon.[3]

Corrections.—As has been explained, where a successor does not obtain the whole of his succession at the time of the duty becoming payable, he is charged only on the value of the property from time to time obtained.[4] And where it is proved that duty has been

[1] F. A. 1912, s. 9.
[2] Succession Duty Act, 1853, s. 24.
[3] *Ibid.*, s. 26.
[4] *Ibid.*, s. 37.

paid by mistake or too much duty has been paid, the Commissioners are required on application being made to refund the duty so paid in error.[1]

So also where a successor on taking a succession has to give up or is deprived of other property, he is entitled to have an allowance made in his account in respect of the property given up, so long as the property given up was acquired by him by a title not conferring the succession,[2] which passes from the successor to some other person.

Where the succession is such that the rate cannot be fairly ascertained, as above, or there are other complications, the Commissioners are authorised to compound the duty on such terms as they think fit, and they may, in special cases, enlarge the time for payment of any duty.[3] See also page 115 as to Estate Duty. The general powers of compounding and remitting duties and interest there described also apply to Succession Duty.

Commutations.—The Commissioners may also, on the application of the parties accountable, commute Succession Duty presumptively payable.[4] The power to commute is exercised where there has been a sale or other dealing with the property which renders it desirable to get rid of the charge of Succession Duty. Thus if A. is life tenant of a fund and B. entitled on her death, and they agree to divide up the fund in A.'s lifetime, the trustees of the settlement would not be safe in paying over the money until the duty presumptively payable on A.'s death had been provided for. Application should,

[1] Succession Duty Act, 1853, s. 37.
[2] *Ibid.*, s. 38, as amended by 52 Vict. c. 7, s. 10 (1).
[3] Succession Duty Act, 1853, s. 39.
[4] *Ibid.*, s. 41, and 43 Vict. c. 14, s. 11.

therefore, in such case be made to the Commissioners to commute the duty. The duty is assessed on the then capital value of the fund and discounted at £3 per cent. for the expectancy of A.'s life. In such case, where A. receives as her share a sum approximately equal to the value of her life interest, no Estate Duty would be payable on her death. If, however, she surrendered her life interest to B. and died within three years, Estate Duty would be payable, and the trustees should retain a portion of the fund to meet such a contingency. If the life tenant survives the three years, and the Succession Duty has been commuted, the sum retained can safely be paid over.

Again, suppose A. is life tenant of land and B. is entitled in remainder, and they join to sell to C., application should be made to commute the duties presumptively payable on A.'s death. If the proceeds of sale are divided up between A. and B., Succession Duty only would be commuted. If, however, they are invested and held on the same trusts as the land and it is desired to dispose of the future claims for duty, Estate Duty would also have to be commuted in addition to Succession Duty. If A. released his life interest within three years of his death Estate Duty as well as Succession Duty would be payable.

It should be noted that where during the lifetime of the life tenant the property is sold under a trust or power of sale under the instrument creating the succession, the charge of Succession Duty is considered to shift from the property to the proceeds of sale and in such cases, therefore, as it is not an encumbrance on the property in the hands of the purchaser, it is not necessary to commute. The same result follows where settled land is sold under the provisions of the Settled

Land Acts, or is compulsorily acquired by a public authority or company.

In all cases of commutation, where Estate Duty is not commuted, the higher rates of Succession Duty as given in Table II. are payable.[1]

Where the case is one for commutation of Estate Duty, it must be borne in mind that the £1 per cent. rate of Succession Duty is not also payable,[2] unless the whole property passing on the presumptive death exceeds, or will probably exceed, £15,000, and then only where the individual succession is over £1000 (or, in the case of a widow or infant child, is over £2000).[3] And where on the surrender of a life interest Succession Duty has been commuted, and the life tenant dies within three years so that Estate Duty becomes payable, the Succession Duty already paid at £1 10s. per cent. is returnable, assuming the above limits of value for the one per cent. rates are not reached.

Successions Sold or Transmitted.—It is now necessary to give some account of what takes place when a succession is sold or transmitted before the successor becomes entitled in possession. In this connection it should be borne in mind that when once a disposition is created by which property may devolve on death, the claim for Succession Duty expectant on that death cannot be got rid of. In the case of a deed the claim comes into being on the execution of the deed, and in the case of a will on the death of the testator. But before the succession vests in possession and the duty becomes payable (1) *it may be transmitted by death, thus creating another succession, or* (2) *it may be sold or alienated in some other way.*

[1] As the exemption in F. A. 1894, s. 1, would not apply.
[2] F. A. 1894, s. 1. [3] F. A. 1910, s. 58 (2).

First, as to personal estate in the case of a succession transmitted by death. It is provided that only one duty is to be paid and is to be due from the successor who first becomes entitled in possession, but such duty is to be at the highest rate which, if every successor has been subject to duty, would have been payable by any one of them.[1]

Thus if B. who is entitled under a deed to £4000 on the death of A. settles it on himself for life and then on C. and dies before A., there are two successions—one on the death of A. under the original disposition and one under B.'s disposition; but only one Succession Duty is chargeable and that under the last disposition, at whichever rate is higher.

In extension of this rule must be noticed the provision that no person charged with Legacy Duty in respect of any property shall be charged with Succession Duty in respect of the same acquisition of the same property.[2] So that if in the above instance B. had died and bequeathed the £4000 by will so that Legacy Duty was payable, the claim for Legacy Duty would prevail over the claim for Succession Duty under the original disposition, and therefore only Legacy Duty would be payable.[3]

Secondly, the succession in personal estate may be transmitted before it falls into possession in such a way that a new succession is not created—as by alienation or sale. In such cases it is provided that Succession Duty is to be paid at the same rate and time as the same would have been payable if no such alienation had been

[1] Succession Duty Act, 1853, s. 14. [2] *Ibid.*, s. 18.

[3] Attorney-General *v.* Littledale, L. R. 5 H. L. 290.

made.[1] Thus if in the foregoing instance B. had sold his reversion to C., then, on A.'s death, C. would pay duty at the same rate and at the same time as B. would have done if he had not sold.

In the case of real estate and leaseholds the incidence of duty is somewhat different.

If the transmission is under a title creating a new succession, the original succession is displaced and one Succession Duty only is payable on the succession derived from the original successor.[2] Thus if B., who is entitled to a freehold house on the death of A., dies before it falls into possession and devises it by his will to C., the succession of C. under the will of B. displaces the original succession of B., and Succession Duty is only payable under B.'s will and not under the original succession. Moreover, if for any reason B.'s estate is exempt from Succession Duty, as, for instance, if it is under £1000, or if the house passes to his widow or children and does not come within the taxable limits of the £1 per cent. Succession Duty, the property escapes Succession Duty altogether.

Again, the succession to real estate and leaseholds may be transmitted by alienation not conferring a new succession. In such cases as noted above, in that of personal property, the duty is to be paid at the same rate and time as it would have been payable if no alienation had been made. Thus, in the above nstance, if B. had sold his reversion to C., then, on A.'s death, C. pays Succession Duty at the same rate and time as B. would have paid it.[3]

[1] Succession Duty Act, 1853, s. 15.

[2] Attorney-General *v.* Cecil, L. R. 5 Ex. 263.

[3] Solicitor-General *v.* Law Reversionary Interest Society, L. R. 8 Ex. 233, and Wolverton *v.* Attorney-General, [1898] H. C. 535.

But suppose the purchaser dies having created a new succession by his will. In such a case it may be urged that two Succession Duties are payable—one under the original title at the rate appropriate to the original successor, and one under the purchaser's will as on a succession by his devisee from him. Such cumulative duties are not, however, claimed. But if an expectant successor mortgaged his interest and died before it fell into possession, Succession Duty would remain payable on the mortgage debt under the original disposition, as to that extent the original succession would not be regarded as displaced.[1]

The purchaser, instead of buying the reversionary interest, may acquire the property outright from the life tenant and original successor. If he then dies in the lifetime of the life tenant, having devised the property to D., two Succession Duties would be payable—one on the death of the purchaser under his will, and again on the death of the life tenant under the original disposition.[2]

As already explained, where a successor is competent to dispose, duty is chargeable on the principal value of the property. If, however, the effect of alienation or transmission is that the successor who becomes entitled in possession takes for life only, then the duty is charged on the value of his life interest. Thus, in the last instance, if the purchaser had by will devised the property to D. for life, and then to E. in fee, Succession Duty would have been paid under the purchaser's will on the life interest of D. according to his relationship to the purchaser. On A.'s death, duty would be again payable on D.'s life interest at the rate

[1] Hamilton's Estate, [1905] 39 Ir. L. T. 272.

[2] Northumberland *v.* Attorney-General, [1905] A. C. 406.

depending on the relationship of the original successor to the original predecessor. Further, on D.'s death after A., Succession Duty would become payable by E. on the principal value according to his relationship to the purchaser.[1]

Reversion Sold before The Finance Act, 1894.—In this connection it should be pointed out that where a reversion has been sold before The Finance Act, 1894, came into operation, it is provided that it is only to be liable to the same duties as would have been payable if that Act had not been passed.[2] This provision relieves a purchaser from finding his purchase burdened with greater liabilities for Death Duties by subsequent legislation than he could have taken into account. The property in such a case escapes Estate Duty altogether, even though it is real estate and has not therefore borne Probate Duty. Further, unless the successor is a charity[3] or corporation,[4] real estate is not liable to Succession Duty on the capital value, but such duty is charged in the same way as it would have been before the Act, viz., by way of life interest. The only distinction is that the life is that of the purchaser and not that of the original successor. Therefore if B., an expectant successor in fee under the will of A., has sold to C. before The Finance Act, 1894, C. does not pay duty on the principal value of the property, but on the value of his (C.'s) life interest at the rate depending on the relationship (if any) subsisting between B. and A. The purchaser in fact pays duty on his own life interest, but at his vendor's rate.

[1] Northumberland *v.* Attorney-General, [1905] A. C. 406.

[2] F. A. 1894, s. 21 (3).

[3] Succession Duty Act, 1853, s. 16.

[4] Succession Duty Act, 1853, s. 27, and Solicitor-General *v.* Law Reversionary Interest Society, L. R. 8 Ex. 233.

A mortgagee of a reversionary interest is not, as such, chargeable with Succession Duty, but if he forecloses he becomes liable. If he sells under his powers of sale, the purchaser becomes liable for the duty, as it is a charge on the property in whosesoever hands it may be.

Where a life tenant and a reversioner combine to mortgage settled real estate, Estate Duty would only be payable on the death of the life tenant on the value of the property, less the mortgage debt[1]; but no allowance could be claimed in the succession account for the mortgage debt, as so far as it affects the fee simple it must be regarded as created by the remainderman.[2] If, therefore, the latter was a lineal issue of the settlor and the property did not come within the range of the £1 per cent. Succession Duty, the result would be that Estate Duty would be payable on the property, less the mortgage debt and Succession Duty at £1 10s. per cent. on so much of the property as escapes Estate Duty, *i.e.* the amount of the mortgage money.

Acceleration.—Akin to the sales of reversionary interests is the acceleration of the interest of the successor by the surrender or extinction of any prior interests. In such cases it is provided that the duty is to be paid at the same time and in the same manner as it would have been paid if no such acceleration had taken place.[3] Thus, suppose B. is entitled to £4000 on the death of A., under a settlement, and A. during his lifetime releases his life interest so that B. becomes entitled in possession, Succession Duty does not become at once payable, but can be deferred until the death of A.

[1] Cowley *v.* Commissioners of Inland Revenue, [1899] A. C. 198.

[2] *Re* Peyton, 7 H. & N. 265, and *re* Hamilton's Estate, [1905] 39 Ir. L. T. 272.

[3] Succession Duty Act, 1853, s. 15.

Again, suppose under a marriage settlement property was settled by A. on B. for life, and then on her children, and during A.'s life a sum was advanced to one of her children for his advancement in life, A. giving up her life interest, Succession Duty would be payable, but could not be enforced until the death of A., and if paid by way of commutation at the time of the advance an allowance in respect of B.'s life interest would be made.[1] The higher rates of Succession Duty are payable in respect of the advances, as, assuming they were made more than three years before the death of the life tenant, they would escape Estate Duty (see note at the foot of Table III., page 255).

The proper course in cases of this kind, where property is taken out of settlement, is to apply to commute the duty payable so that no question can arise on the life tenant's death. Assuming the life tenant is in ordinarily good health, duty is assessed on the property taken out of settlement and discounted for the life of the life tenant.

The exercise of an overriding power of appointment under a settlement is not an acceleration.[2]

The value for Succession Duty in acceleration cases (where there has been no commutation) is the value on which duty would have been payable if no acceleration had taken place, *i.e.* the value at the death of the life tenant.

Enlargement.—Somewhat similar to acceleration is the question of enlargement, as where real estate is settled on B. for life, and on her death on her husband C. for life, and in default of issue of B. and C., on B. absolutely. On

[1] *Ex parte* Sitwell, 21 Q. B. D. 466.

[2] Attorney-General *v.* Selborne, [1902] 1 K. B. 388.

the death of C. in the lifetime of B., and in default of issue, B.'s interest becomes enlarged, and she is liable to Succession Duty on the capital value of the property, as on a substantive succession, subject to an allowance being made in respect of the life interest which she had before the death of B.[1]

Successor also the Predecessor.—It is convenient to mention here the case of a successor taking a succession under his own disposition. The rule is that a successor shall not be chargeable with duty upon a succession taken under a disposition made by himself.[2] For instance: A. being entitled in possession to property, settles it on B. for life and then on himself absolutely. On B.'s death no Succession Duty is payable by A., as he succeeds under a disposition made by himself.

There are two exceptions to the rule:—(A) Where at the time of the disposition the property is in reversion and the life tenant dies during the continuance of the disposition; and (B) On the extinction or determination by a death of a charge or limited interest created by the successor where at the date of the creation of such charge or limited interest he was entitled to the property subject thereto in reversion.[3] In these excepted cases it is provided that duty is to be paid at the same rate as it would have been payable if no disposition had been made. Thus A. settles real estate on his nephew B. for life and then on B.'s son C. in tail. B. and C. disentail and resettle the property on B. for life, thus restoring his former interest, then on C. for life and on C.'s death on his eldest son in tail. C. in such cases has cut down his interest

[1] Succession Duty Act, 1853, s. 20, and see Attorney-General *v.* Robertson, [1893] 1 Q. B. 293.

[2] Succession Duty Act, 1853, s. 12. [3] *Ibid.*

to an estate for his life only and on the death of B. he thus becomes entitled under his own disposition. He is, however, liable to duty as on a succession derived from his great uncle A. as predecessor, and not from his father B.[1]

In general, dealings with real estate settled in strict settlement and subsequently disentailed are regarded as dispositions by the original tenant in tail. On the death of the original tenant for life such a disposition is regarded as an alienation by the original tenant in tail if then living, but if he is then dead it may create a new succession derived from him as predecessor.[2]

Again, if in the above example B. and C. join in charging an annual sum on the property in favour of D. for life, Succession Duty is payable on the death of D. after B. as on a succession derived from A.

If, however, C., having come into possession of the property by the death of B., were to create the charge in favour of D., he would not be liable to duty on the death of the annuitant in his lifetime.

From what has been said above, it follows that an expectant successor cannot diminish the Succession Duty payable on the death of the life tenant by mortgaging or otherwise charging his reversion. So that if B. is entitled to property on the death of A., and during A.'s lifetime he mortgages the property he cannot on the death of A. deduct the mortgage in his succession account.[3]

And if in A.'s lifetime he created a rent charge in favour of C., he could not make any deduction in respect

[1] Attorney-General *v.* Sibthorpe, 3 H. & N. 424; Braybrooke *v.* Attorney-General, 9 H. L. C. 150; Attorney-General *v.* Floyer, 9 H. L. C. 477; Attorney-General *v.* Smythe, 9 H. L. C. 498.

[2] Attorney-General *v.* Cecil, L. R. 5 Ex. 263.

[3] Succession Duty Act, 1853, s. 34; *re* Peyton, 7 H. & N. 265; and see *in re* Hamilton's Estate, [1905] 39 Ir. L. T. 272.

thereof when paying Succession Duty on A.'s death unless it arose in such a way as to create a new succession between B. and C.[1]

The rate of Succession Duty is determined by the circumstances of the succession at the time of its creation and not by subsequent events which take place before it falls into possession. So where a woman who is entitled to a succession under a deed derived from her husband is divorced, she does not by the fact of divorce become chargeable with duty as a stranger in blood.[2]

A child born out of wedlock and subsequently legitimated (in countries where this is permitted) by the marriage of his parents is regarded as a lineal issue, and would not, therefore, be liable to Succession Duty as a stranger in blood,[3] except, perhaps, in the case of English real estate under an intestacy.[4]

Where a successor has married a person in a nearer degree of relationship to the predecessor, he is only liable to duty at the rate at which his wife would have been chargeable.[5] The marriage must have taken place before the succession took effect in possession, although the benefit will not be lost by the death of the wife, whether that event takes places before or after the date of the succession. On the other hand, a successor who has once become chargeable with duty at a certain rate is not entitled to the benefit of this provision by marrying a relation of the predecessor. And where the predecessor has married a relation of the successor, the rate of Succession Duty is unaffected.

[1] Succession Duty Act, 1853, s. 20, and *re* Peyton, 7 H. & N. 265.
[2] Bullmore *v.* Wynter, 22 Ch. D. 619.
[3] Grey *v.* Stamford, [1892] 3 Ch. 88.
[4] Doe, deceased; Birtwhistle *v.* Vardill, 7 Cl. & Fin. 895.
[5] Succession Duty Act, 1853, s. 11.

Succession Duty is to be paid at the time the successor or any persons in his right (*i.e.* purchasers or derivative owners) or on his behalf (*i.e.* trustees, guardians, committees, &c.) become entitled in possession to the succession or to the receipt of the income and profits thereof.[1] But as already explained, if there is any prior charge, estate, or interest not created by the successor himself, the duty is to be paid on the determination of such charge, estate, or interest (*i.e.* if not previously paid or commuted). The additional duty so payable is payable by the same instalments, and, where duty is payable by way of life interest, the age of the successor is taken as at the date of determination of the charge, estate, or interest.

[1] Succession Duty Act, 1853, s. 20.

# CHAPTER XIV.

## PERSONS ACCOUNTABLE FOR SUCCESSION DUTY.

THE successor himself is personally liable for the duty.[1] So also are the following persons to the extent of the property or funds actually received or disposed of by them, *i.e.* any trustee, guardian, committee, tutor, curator, or husband in whom respectively the property or the management thereof is vested, and every person in whom it is vested by alienation or other derivative title at the time the succession becomes an interest in possession.[2] Such persons are authorised to compound or pay in advance any such duty, and to retain out of the property the amount of the duty, or to raise the amount and the expenses on the security of the property.[3] All such persons become debtors to the Crown for the unpaid duty.[4]

The successor, being personally accountable, cannot get rid of his liability by selling the property after he becomes entitled in possession, and if he dies, the unpaid duty is a debt from his estate for which his executors are personally accountable. A purchaser who buys after the property has fallen into possession is not personally accountable, but the duty is made a first charge on the successor's interest in the property.[5]

[1] Succession Duty Act, 1853, s. 42.
[2] *Ibid.*, s. 44. [3] *Ibid.* [4] *Ibid.*
[5] Succession Duty Act, 1853, s. 42, and F. A. 1894, s. 18.

Where the reversion is purchased, the purchaser is liable for the duty[1] and has no claim to be reimbursed by the successor, *i.e.* in the absence of express agreement.[2] Where a life tenant and remainderman join to sell the property, the purchaser is entitled to have the property conveyed free from any charge of duty, and in such cases the vendors may be required to commute the duty payable on the death of the life tenant.

When a Charge.—Besides the personal liability of the successor, it is provided that in the case of real estate the duty is to be a first charge on the interest of the successor, and of all persons claiming in his right,[3] and in the case of personal property it is a first charge on the interest of the successor while the property remains in the ownership or under the control of the successor, or of any trustee for him, or of his guardian, or committee, or tutor, or curator, or husband of any wife who shall be the successor.[4] The duty is to be a debt due to the Crown, which, in the case of real estate, has priority over all charges and interests created by the successor, but is not to affect any other real estate comprised in the succession. Where the property is subject to any power of sale, exchange, or partition, the duty is charged substitutively upon the successor's interest in the real estate acquired in substitution and in the meantime upon his interest, also in all moneys arising from the exercise of such power and all investments of such moneys.[5] Thus, where the successor is

[1] Succession Duty Act, 1853, Sections 15 & 44, and Solicitor-General *v.* Law Reversionary Interest Society, L. R. 8 Ex. 233.

[2] Cooper *v.* Trewby, 28 Beav. 194.

[3] Succession Duty Act, 1853, s. 42, and F. A. 1894, s. 18.

[4] Succession Duty Act, 1853, s. 42.

[5] *Ibid.*

entitled for life only, the duty is a charge on the life interest, but not on the property itself, and therefore when the successor dies and the duty is unpaid the charge ceases, but the duty is recoverable from the estate of the successor. If the property is vested in trustees, they are primarily accountable for the duty and should see to it that the duty is paid or provided for before allowing the successor to receive the income.

Where the successor is absolutely entitled, the duty is a charge on the property itself, and if the successor sells, or dies, and the duty is not paid, it remains a charge in the hands of the purchaser or devisee. Where the successor dies before the duty is paid, it is also a debt due from his estate and the Crown has therefore the right to resort thereto, or to the property itself.

The unpaid duty, being a debt due to the Crown, is not affected by lapse of time, as the Statutes of Limitation do not bind the Crown, and therefore, however long the duty may have been unpaid, payment can still be enforced.[1]

Limitation of Liability.—However, in the case of purchasers and mortgagees, the liability is limited, and it is provided that real estate or any interest therein shall not, as against a purchaser for value (including trustees of a marriage settlement)[2] or a mortgagee, remain charged with duty after six years from notice to the Commissioners of Inland Revenue (to be given in the form prescribed by them) of the fact that the successor, or any person in his right or on his behalf, has become entitled in possession,

[1] See Attorney-General *v.* Lordan, [1906] 40 Ir. L. T. 98.
[2] *Re* Donelan's Estate, [1902] 1 I. R. 109.

to his succession, or to the receipt of the income and profits thereof, or after two years from the time for payment by such successor of the last instalment or part of the duty, or in the absence of any such notice or payment after twelve years from the date when the duty became payable.[1]

Thus, where notice has been given, liability for unpaid duty ceases after six years, or where the successor has elected to pay by instalments, after two years from the date for payment of the last instalment; but as the notice has to be given in a certain prescribed form,[2] a purchaser or mortgagee will not usually be able to bring himself within the protection afforded by this provision.

After twelve years, whether any notice has been given or payment made, liability ceases; but the liability of the successor and all other accountable persons remains, and, further, at the expiration of such periods the duty is to become charged substitutively upon any other estate or interest comprised in the succession and remaining vested in the successor or in any person in his right or on his behalf (other than the purchaser or mortgagee), and, in the case of a mortgage, on the equity of redemption.[3]

But though, as a general rule, a successor and the other persons liable (not including a purchaser and mortgagee) cannot get rid of liability, whatever period of time may have elapsed,[4] provision is made by which they may protect themselves in certain cases. Thus, any person may deposit an attested copy of any document which creates a liability to Succession Duty

[1] 52 & 53 Vict. c. 7, s. 12 (1). [2] *Ibid.*, s. 15. [3] *Ibid.*, s. 14 (2).
[4] Attorney-General *v.* Lordan, [1906] 40 Ir. L. T. 98.

(other than a will which has been proved) with the Commissioners, and, after a receipt has been given for such copy, no person shall be liable for duty thereunder after six years from the date of notice to the Commissioners of the fact which gave rise to an immediate claim for such duty.[1]

This provides for claims arising under deeds and other documents, but not under wills or intestacies; and with regard to the latter, where a grant of representation has been taken out, it is provided that no person shall be liable for duty after six years from the date of settlement of the account in respect of which duty was payable where such account was full and complete and contained all material facts, and no trustee, executor, or administrator shall, after such six years, be liable for duty if it is proved that the account was correct to the best of his knowledge, information, and belief.[2] This provision, however, involves the delivery of an account, and does not afford relief until the account has been delivered and six years have elapsed since an assessment of duty was made.[3]

Where property is subjected to a trust for sale at the time the succession is created, and has been sold before the claim arises, the charge of duty shifts to the proceeds of sale. Thus A. by deed settles real property on trust to sell, or empowers the trustees to sell, and, in the meantime, the income is to be paid to B. for life. On B.'s death, Succession Duty is payable and attaches to the property itself if not then sold, but if sold, the charge shifts to the investments representing the proceeds of sale. The same result follows where the sale is made by a tenant for life

[1] 52 & 53 Vict. c. 7, s. 13 (1). [2] *Ibid.*, s. 14.

[3] Attorney-General *v.* Montefiore, 52nd Inland Revenue Report, page 55.

under the powers of the Settled Land Acts, or land is compulsorily acquired by a corporation, county or district council, or company.

Where property is sold after the duty has become payable, the successor remains liable, and the duty is also a charge on the successor's interest in the hands of the purchaser. On the sale of a reversion, the purchaser is accountable for the duty,[1] and, as between himself and the vendor, has no right to be reimbursed by the vendor for the duty.[2]

The accountable persons are required under certain monetary penalties to give notice of any succession, and to deliver proper accounts showing the value of the property, the deductions claimed, the names of the successor and predecessor, and their relation to each other, and all other particulars necessary to enable the Commissioners to ascertain the duties due.[3] If the Commissioners are dissatisfied with the account they may, subject to appeal, assess the duty on the footing of such account and upon such estimate as they may place thereon.[4]

The accountable parties are, if required by the Commissioners, to produce evidence in support of the account.[5] If, however, the assessment is objected to, they have a right of appeal to the Court within twenty-one days of the assessment.[6]

The Commissioners are required to give a stamped receipt for the duty and, on the application, for any reasonable purpose (*e.g.* on the occasion of a sale or

[1] Succession Duty Act, 1853, s. 44.
[2] Cooper *v.* Trewby, 28 Beav. 194.
[3] Succession Duty Act, 1853, s. 45, and 52 Vict. c. 7, s. 10 (3).
[4] *Ibid.* [5] Succession Duty Act, 1853, s. 49.
[6] Succession Duty Act, 1853, s. 50.

transfer) of any person interested, a certificate of payment of the duty.[1] Any such receipt or certificate which purports to be in discharge of the whole duty payable shall exonerate a *bonâ fide* purchaser for value without notice notwithstanding any omission or misstatement.[2]

Where any proceedings are pending in Court for the administration of any property chargeable with Succession Duty, the Court itself is to provide out of the property in its possession or control for the payment of duty to the Commissioners[3] (and see notes in connection with Legacy Duty, page 208).

Separate assessments are to be made, if required, in respect of separate properties, and in such case the respective properties are chargeable only with the amount of duty separately assessed in respect thereof.[4]

Where property is vested in trustees, they are the persons primarily liable to account for the duty, though the successors are accountable as well. If, therefore, the trustees distribute the property without providing for the Succession Duty, they remain personally liable, and in practice, before any distribution is made, the trustees should make application to the Commissioners for an assurance that there are no outstanding claims for duty. It should be borne in mind that the term "trustee" is, for Succession Duty purposes, made to include an executor or administrator and any person administering property affected by any express or implied trust.[5]

Where property is being sold by a life tenant and the reversioner, or is being divided up, the trustees

[1] Succession Duty Act, 1853, s. 51. [2] *Ibid.*, s. 52.
[3] *Ibid.*, s. 53. [4] *Ibid.*, s. 43. [5] *Ibid.*, s. 1.

should require the duties that are presumptively payable to be commuted, or, if this is not done, they should retain a sufficient sum to provide for the future duties.

The Commissioners may, if they think fit, on the application of the accountable parties, accept in satisfaction of the whole or part of the Succession Duty such part of the property chargeable as may be agreed upon (see page 93).[1]

[1] F. A. 1910, s. 56.

# CHAPTER XV.

## EXEMPTIONS FROM SUCCESSION DUTY.

(1) Property to which Members of the Royal Family succeed.

(2) Where the whole succession derived from the same predecessor is under £100 in value.

(3) Property which is liable to Legacy Duty.

(4) Books, prints, pictures, and articles of artistic or other special interest to which a body corporate succeeds.

(5) Settled chattels until they come into the hands of a person competent to dispose of them.

(6) Similar articles, certified by the Treasury to be of national interest, until sold.

(7) Money left to pay duty.

(8) Transactions made *bonâ fide* for full consideration in money or money's worth.

(9) Property taken by a successor under his own disposition.

(10) Advowsons and Church patronage, until sold.

(11) Timber, until sold.

(12) Life insurance policies as between the company and the beneficiaries.

(13) Bonds for payment of money after the death of a person, made *bonâ fide* for full consideration in money or money's worth.

(14) Property given for charitable purposes in Ireland (see corresponding exemption from Legacy Duty under wills, page 218).

(15) Where the net value of the deceased's whole free estate is under £1000 and Estate Duty has been paid.

(16) Successions of lineal issue, lineal ancestors, and the husband or wife of the predecessor where the taxable limits are not reached.

1. A succession to which any member of the British Royal Family becomes beneficially entitled is exempt from Succession Duty, and no account need be rendered.[1]

2. Where the property liable to Succession Duty, passing on any death, derived from the same predecessor is under £100, Succession Duty is not payable.[2]

Thus, if under the will of A., B. becomes entitled to real estate worth £80, and there is no other property chargeable with Succession Duty, B. escapes without payment of Succession Duty, even though he may take a share of A.'s personal estate which is worth considerably more than £100.

But if another successor, C., takes other real estate worth £70 under the same will, both successions would be liable to Succession Duty, as the whole successions are then over £100 in value.

[1] Succession Duty Act, 1853, s. 18, incorporating Legacy Duty exemptions.

[2] Succession Duty Act, 1853, s. 18.

If, however, the property devised to B. were given first to A.'s wife for life, it would escape duty on the death of the widow, because the whole succession passing on that death would be under £100 in value.

Again, if B. derived his succession on the death of A. from one predecessor, and C., on the same death, from another predecessor, both would escape duty, as the successions are derived from different predecessors, and the result would be the same if B. succeeded to both successions.

Formerly, where the taxable value of the succession was under £20 in value, Succession Duty was not payable.[1] Thus, if A., aged ninety, became entitled for life to property worth £7 per annum the taxable value according to the tables in the Act would be £19 1s. 3d., and A. would have escaped duty. This exemption has, however, now been abolished.[2]

3. Property which is liable to Legacy Duty is not also chargeable with Succession Duty in respect of the same acquisition of the same property. Thus A. by deed gives a fund to B. for life, and then to C., and C. dies before B., leaving his reversion to D. On the death of B., Legacy Duty is payable on the property under C.'s will and this duty displaces the Succession Duty which would otherwise have been payable under the deed.[3] It might, however, happen that C.'s estate was exempted from Legacy Duty; as, for instance, if it were under £1000 in value. In that case Succession Duty would be payable because Legacy Duty was not in fact payable under C.'s will (see exemptions Nos. 15 and 16).

[1] Succession Duty Act, 1853, s. 18. [2] 52 Vict. c. 7, s. 10 (2).

[3] Succession Duty Act, 1853, s. 18, and Attorney-General *v.* Littledale, L. R. 5 H. L. 290.

4. Books, prints, pictures, statues, gems, coins, medals, specimens of natural history, or other specific articles to which a body corporate succeeds for preservation and not for sale are exempt from Succession Duty[1] (see corresponding exemption from Legacy Duty, page 216).

5. Plate, furniture, or other things not yielding income and settled upon persons in succession are not liable to duty while enjoyed in kind by a person not having power to dispose. Thus, where A. by deed settles such property on himself for life and then on B. for life and on his death on C. absolutely, Succession Duty is not payable by B. on the death of A.[2] On B.'s death, however, Succession Duty would become payable (see also No. 6; and corresponding exemption from Legacy Duty, page 215).

6. Pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income, as appear to the Treasury to be of national, scientific, historic, or artistic interest are not chargeable with Succession Duty while enjoyed in kind, whether settled or not.[3] It should be noted, first, that the exemption applies whether the chattels are settled or are given to a person who can dispose of them as he thinks fit; and, secondly, that the Treasury are to decide whether the chattels in question are entitled to the benefit of the exemption. Application should therefore be made in the first instance to that body, with full particulars of the chattels, stating where they are located and where they may be seen, and giving a

[1] Succession Duty Act, 1853, s. 18, incorporating exemptions in Schedule to 55 Geo. III. c. 184.

[2] Succession Duty Act, 1853, incorporating Legacy Duty Act, 1796, s. 14.

[3] F. A. 1910, Sections 63 and 96 (1), extending F. A. 1896, s. 20, and amending Legacy Duty Act, 1796, s. 14, which is incorporated by Succession Duty Act, 1853, s. 18.

short account of the circumstances which are considered to entitle them to the exemption. Should they at any time be sold, Succession Duty becomes at once payable and the payment is referred back to the last death on which the chattels passed, but interest on the duty would only be chargeable from the date of sale. The person for whose benefit the sale is made is accountable for the duty. (See corresponding exemptions from Estate Duty and Legacy Duty.)

7. Money which is left to pay Succession Duty is not itself liable to Succession Duty, and, therefore, where a devise is directed to be free of Succession Duty, no Succession Duty is payable on the money applied in payment of Succession Duty on the devise.[1] In strictness, such sums are liable to Legacy Duty, but in practice that duty is not claimed.

8. Transactions which are in the nature of *bonâ fide* sales for full consideration in money or money's worth are exempted from Succession Duty (see pages 239 and 240). To obtain complete exemption there must not be any element of bounty in the transaction, and so a gift *inter vivos* of £500 to a charity on terms that an annuity of £25 should be paid to the donor for life and on his death to his wife for life, would not be regarded as a transaction for full monetary consideration, and on the wife's death Succession Duty would be payable by the charity on the cesser of her annuity.[2]

Where under a settlement provision is made by way of an annual sum or otherwise for remuneration of the trustees, Succession Duty is not payable on

[1] Succession Duty Act, 1853, s. 18.

[2] Attorney-General *v.* Johnson, [1903] 1 K. B. 617.

the death of one trustee in respect of the benefit which accrues to a new trustee appointed in his place[1] (see corresponding exemption from Estate Duty, page 120).

9. Where a successor becomes entitled on a death under a disposition made by himself, Succession Duty is not payable provided the property was in possession at the time the disposition was made. In similar conditions Succession Duty is not chargeable on the termination of any charge, estate, or interest created by the successor[2] (see page 282).

10. Where a succession comprises an advowson or Church patronage, Succession Duty is not payable unless and until a sale for money or money's worth takes place[3]; Succession Duty is then payable upon the proceeds of sale.

11. Where a succession comprises land on which timber, trees, or wood are growing, Succession Duty is not payable in respect of such timber, trees, or wood unless and until sold[4] (see page 264).

12. In the case of life insurance policies, it is expressly provided that the relation of predecessor and successor is not created between the insurers and the insured, or between the insurers and any assignee of the assured; but any assignment, disposition, or devolution of the moneys payable under such policy may create a succession liable to duty.[5] So, where the insured assigns the policy by way of gift during his lifetime and continues to pay the premiums, Succession Duty is payable on his death;

[1] Attorney-General *v.* Eyres, [1909] 1 K. B. 723.
[2] Succession Duty Act, 1853, s. 12. [3] *Ibid.*, s. 24.
[4] F. A. 1912, s. 9, and F. A. 1910, 2nd & 3rd paragraphs of s. 61 (5).
[5] Succession Duty Act, 1853, s. 17.

but if the assignment was absolute and the donee pays the premiums from the date thereof, no Succession Duty is payable[1] (see page 244).

13. Similar remarks apply to bonds or contracts for payment of money made for valuable consideration in money or money's worth[2] (see page 245).

15. Where the value for Estate Duty, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1000, no Succession Duty is payable.[3] Thus, suppose A. has property of his own worth £600 and there is a nomination policy worth £200, no Succession Duty would be payable, as the whole together is under £1000; but if settled property under £1000 in value also passes, it is not exempted. Thus, if in the above instance property worth £700 also passes under a settlement, it would not be exempt from Succession Duty by reason of the fact that it is under £1000.

The exemption, in fact, expressly excludes property settled otherwise than by the will. The fact that the deceased settled his estate by his will does not, however, prevent the exemption from applying to such estate. As to what properties make up the estate not exceeding £1000, see page 74.

16. Where Estate Duty has been paid, Succession Duty at £1 per cent. is not payable[4] unless the taxable limits are exceeded (see page 256 *et seq.*).

This exemption applies—

(1) Where the property passing on the deceased's death in respect of which Estate Duty is

[1] Lord Advocate *v.* Robertson (or Fleming), [1897] A. C. 145.
[2] Succession Duty Act, 1853, s. 17. [3] F. A. 1894, s. 16 (3).
[4] F. A. 1894, s. 1, and F.A. 1894, s. 5 (2), as amended by F.A. 1898, s. 13.

payable (not taking into account the exceptions mentioned on page 256) does not exceed £15,000 ; or [1]

(2) Where the limit of £15,000 is exceeded, but the value of the total *individual* benefit to any successor derived from the same testator, intestate, or predecessor, whether such benefit is a legacy or a succession (except, perhaps, successions under dispositions under which a first succession arose before The Finance Act, 1910), does not exceed £1000,[2] or, in the case of a widow or infant child, does not exceed £2000.[3]

[1] F. A. 1910, s. 58 (2) (*a*).
[2] F. A. 1910, s. 58 (2) (*b*)
[3] F. A. 1910, s. 58 (2) (*c*).

# CHAPTER XVI.

## SUCCESSION DUTY.—PRACTICE.

FORMS in use: *No. 1.*—For legacies payable out of real estate or leaseholds or the proceeds of sale thereof. Estate Duty may be deducted as the legatee is liable to pay a proportion, unless the legacy is payable out of leaseholds given by will. Interest on duty is charged from the death, as the legacy carries interest from that date.

*No. 2.*—For annuities or rent charges charged wholly on real estate or leaseholds. The date of birth of the annuitant should be shown. Estate Duty may be deducted (unless the annuity is charged on leaseholds given by will) and such deduction may be a percentage of the annuity at the same rate as Estate Duty. Thus, suppose the annuity were £50 charged on a freehold field called "Blackacre," on which Estate Duty had been paid at £4 per cent. The deduction against the annuity would be £4 per cent. on £50=£2; and therefore the annuity would be reduced to £48. A similar proceeding would be followed where Settlement Estate Duty is chargeable, and in that case the deduction would be £2 per cent. on the annuity. The duty may be paid either by four equal yearly instalments, the first of which is due at the end of a year from death, or in full under discount. If the annuitant dies before all the instalments have been paid, those not due cease to be payable, and if the duty was paid in full under

discount, application should be made on *Form H*, accompanied by the stamped account, for a return of duty equivalent to the instalments which would not have become due before the annuitant's death.

Where the annuity or rent charge is charged on the property by deed, the Succession Duty may be paid by eight half-yearly instalments, as in the case of a succession for life to real estate, and if paid in full an equivalent discount would be allowed.

*No. 4* in duplicate.—For personal property, not including leaseholds, under a settlement where duty is chargeable on the capital. This form is used where the successors become absolutely entitled, or where the property is taken by different persons in succession who are all liable to the same rate of duty. The property is accounted for at its value at the date of the death giving rise to the claim, *i.e.* the same value as for Estate Duty, and the Estate Duty and Settlement Estate Duty (where payable) and costs may be deducted. The duty is payable in full and cannot be paid by instalments. Interest on the duty is chargeable from death.

*No. 5* in duplicate.—For personal property (not including leaseholds) where the duty is chargeable by way of annuity. £4 per cent. on the Estate Duty and Settlement Estate Duty may be deducted. The duty is payable in the same way as already detailed in the case of *Form 2*.

*No. 6* in duplicate.—For real and leasehold property, whether the successor takes for life only or for less than an absolute interest.

The account should contain the gross rental of the property, or, if not let or occupied by the owner, the gross assessment to property tax, or, if not assessed to property tax, the gross assessment to

poor rate. Deduction may be taken for any ground or chief rent, land tax, repairs (if paid by the owner), drainage rent charge, or other annual charges on the property, such as tithe rent charge and rates, if paid by the owner. The deduction for repairs should be the average sum required to keep the property in order, but not including the cost of structural alterations or improvements. An average deduction would be £5 per cent. to £7 10s. per cent. of the gross rental for agricultural property, £10 per cent. to £15 per cent. for cottage and tenement property, and £10 per cent. for house property. If the property is let on a repairing lease so that the repairs are done by the tenant, no deduction for repairs should, of course, be taken. Income or property tax may not be deducted,[1] nor, where the account is based on the gross assessment of the property tax, may tithe rent charge, if the latter is separately assessed, and therefore allowed for in the assessment of the property.

If the property is subject to an annuity or terminable charge, deduction should be taken against the annual value, but a supplemental account for further duty will be required when the annuity or charge terminates by the death of the annuitant. £4 per cent. interest on the Estate Duty, and Settlement Estate Duty (where payable) may be deducted, except in the case of leasehold property under a will, in which case no deduction in respect of Estate Duty may be made. If Increment Value Duty is payable, £4 per cent. thereon may be deducted. Deduction may also be taken for £4 per cent. on sums spent by the successor, before becoming entitled in possession, in substantial repairs or

[1] *Re* Elwes, 3 H. & N. 719.

permanent improvements, also in respect of any fines &c. due in respect of copyhold property (see page 269).

Where the property is purely agricultural, £5 per cent. may apparently be deducted for expenses of management, and it would seem that the annual value should be based on the gross assessment to property tax and not on the gross rental.

The account should show the exact date of birth of the successor and his relationship to the predecessor, given in the terms of the Act, as shown on the back of the form. The duty may be paid by instalments, as explained on page 270, the first being due one year after the death. If paid in full, discount is allowed for a period of three years three months, less the time which has already elapsed between the date of death and the delivery of the account. If the successor dies before all the instalments are paid, the half-yearly instalments which have not become due cease to be payable, and if the duty was paid in advance, application should be made on *Form H*, duly sworn, and accompanied by the stamped receipt for a return of a proportionate amount of the duty.

*No. 6-1* in duplicate. For real and leasehold property where the successor takes absolutely.

The account should show the same value as for Estate Duty and (except in the case of leasehold property under a will) Estate Duty should be deducted as well as expenses (if any) of raising the same, and also any Increment Value Duty that may be payable.

The duty may be paid at once, in which case, if payment is made within the year, discount up to the end of the year will be allowed; or it may be paid by the same instalments as for Estate Duty, the first

being due one year after the death. If, however, the property is sold, the whole duty is payable with interest as from the date of completion of the sale, and if such date occurs within the first year, no discount is allowable from the date of sale. If the duty is being paid by instalments and the successor dies before they are all paid, the remaining instalments are still payable, though the subsequent owner may continue to pay by instalments.

There is no provision corresponding to that relating to personal estate by which duty can be taken at once on the *corpus* of real estate and leaseholds which devolves in succession on persons all liable to the same rate of duty.

*No. 7.* For the second and subsequent instalments of duty assessed on *Form 6* by way of life interest.

*No. 7-1.* For the second and subsequent instalments of duty assessed on *Form 6-1* on capital value.

*No. 8* in duplicate. For the proceeds of real and leasehold property *directed to be sold.*

The gross proceeds of sale should be included in the account, or if the property has not been sold, the same value as for Estate Duty. Estate Duty (except in the case of leaseholds under a will) and Settlement Estate Duty, if payable, may be deducted and also the costs of sale. The account should be used where the successor takes the property absolutely, or where it is given to different people in succession, all of whom are liable to the same rate of duty. The duty is payable in full and cannot be paid by instalments, and interest on the duty is charged from the death.

*No. 9* in duplicate. For the cesser of terminable charges upon real and leasehold property.

This is mainly used when an annuity or rent charge on real or leasehold property ceases and the successor takes for life. The duty may be paid by the same instalments as the duty on the property itself, and, if paid in full, discount is allowed for three years and three months, less the time which has elapsed between the death of the annuitant and the delivery of the account. The duty is payable on the life interest of the successor, and his age is taken as at the date of death of the annuitant. Deduction may be taken for £4 per cent. on the proper proportion of the Estate Duty, except where the whole of the Estate Duty has been allowed for in the original account.

Where the successor is competent to dispose under a disposition taking effect after The Finance Act, 1894, and deduction was taken in the original account for a "slice" of the property sufficient to produce the annuity, duty is payable on the death of the annuitant on the value of such "slice," and may, in the case of real estate and leaseholds, be accounted for on *Form 6-1* in duplicate. In the case of personal estate, where the successor is competent to dispose, *Form 4* should be used.

In the case of a gift *inter vivos* of personalty subject to an annuity payable to the donor, Succession Duty is assessed on the value of the annuity for a perpetuity, *i.e.* according to Table III., at twenty-four and two-fifths years' purchase, and discount is allowable.[1] For instance, A. in his lifetime gives £500 to B., subject to an annuity of £15 to himself for life and on his death to his wife for life. On the death of the wife Succession Duty is payable on the value of £15 per annum at

[1] Lord Advocate *v.* McKersies, 19 S. L. R. 438.

twenty-four and two-fifths years' purchase. £4 per cent. on a proper proportion of the Estate Duty which would have been payable on the death of A. could, however, be deducted from the annuity. The value for Succession Duty cannot, however, exceed the value of the fund, less Estate Duty thereon. Thus, if the rate of Estate Duty were £4 per cent., the limit of liability for Succession Duty would be £480. If, therefore, the reservation had been £20 or £25, as the value at twenty-four and two-fifths years' purchase would exceed £480, Succession Duty would in such case be payable on the latter sum only.

If in the above case the annuity had been charged on real estate, Succession Duty would apparently be payable on a "slice" of the property sufficient to produce the annuity. The benefit accruing by the cesser of the annuity may be regarded as a succession to real property: that being so, duty would be chargeable on the principal value.[1]

*No. 10* in duplicate. For the proceeds of a sale of timber. It should contain the gross proceeds of sale, with the date of sale and date of receipt of the proceeds. Deduction may be taken for costs of sale and felling and repairs to fences, ditches, &c., and re-planting. The duty is assessed on the ultimate proceeds, and interest is charged from the date when the proceeds of sale are received.

*No. 19* in duplicate. For duty payable in expectancy (see pages 95 and 273). This form is supplied where a commutation is agreed to. Where it is desired to commute, application in writing should be made, setting forth the facts fully, stating how the property and

[1] F. A. 1894, s. 18.

proceeds of sale are to be dealt with, and what are the circumstances which are considered to warrant a commutation. If the property devolves under a will, the full name of the testator and the date and place of probate should be stated, and if under a deed, the original or a copy should be forwarded for notation.

Corrections of Succession Duty should be made by means of *Form H*, duly sworn to and accompanied by the receipted account.

Interest on Succession Duty is chargeable at £3 per cent.

As to how the forms may be obtained, and the duty paid, see concluding paragraphs of Chapter VI., page 163, on Estate Duty Practice.

# PART IV.

## CHAPTER XVII.

### INCREMENT VALUE DUTY.

THIS duty was first imposed by The Finance Act, 1910, and as one of the "occasions" on which it may be payable is where the fee simple of land or any interest in land passes on death[1] it is necessary to give a short account of it as a Death Duty.

It is payable on the increment value of land[2] at the rate of £1 for every complete £5 of that value accruing after 30th April, 1909.[3] For the purpose of ascertaining what such increment value (if any) amounts to, some rather intricate calculations have to be made. In the first place, the property has to be valued as on the 30th April, 1909,[4] and from this value is obtained the bare value of the land at that date, or its "original site value."[5] Where the property has been sold during the preceding twenty years or more, and the site value deducible from such sale price exceeds the site value ascertained as above, such value ascertained from the sale price may be substituted as the original site value.[6]

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[1] s. 1 (*b*). [2] s. 2. [3] s. 1. [4] s. 26.
[5] Sections 26 & 27. [6] s. 2 (3), as amended by Revenue Act, 1911, s. 2.

The original site value stands as the test for comparison when any occasion for Increment Value Duty arises. Death is such an occasion,[1] and consequently it is necessary to find out what is the then site value, or, in other words, the "assessable site value."[2] If the assessable site value is greater than the original site value there has been an accruer of increment value, and the increase so shown is the amount on which Increment Value Duty is imposed. It is, in fact, the increase in value which has accrued to the site since the 30th April, 1909, due to conditions or circumstances not directly attributable to the efforts of the owner.

Where the occasion is death, the assessable site value is derived from the same value as for Estate Duty, *i.e.* the market value of the property at the date of death.[3]

The expression "fee simple" means the property in possession not subject to any lease,[4] but it will also be noted that Increment Value Duty may also be payable where only an interest in land passes.[5] This includes a share in the fee simple and a reversion expectant on a lease, but not any other interest in expectancy or any incumbrance or fixed charge, or any leasehold interest for a term not exceeding fourteen years.[6] The site value in the case of an interest in land is ascertained by taking the Estate Duty value of such interest, and then ascertaining the bare site value therefrom. The Increment Value Duty is calculated as if the fee simple had passed, but where in fact only an interest in land passes, the Commissioners apportion the Increment Value Duty between the various parties

[1] s. 1 (*b*). [2] s. 25 (4). [3] s. 2 (2) (*c*).
[4] s. 41. [5] s. 2 (2) (*c*). [6] s. 41.

interested in the property according to certain rules, so that the interest actually passing on death only bears its proportion of the duty.[1]

Although in making the foregoing calculations it is found that increment value has accrued, duty may not necessarily be payable on the particular occasion. In the first place, credit has to be given for the amount (if any) paid on a previous occasion,[2] and allowance is also made of £10 per cent. on the site value.[3] Again, death only becomes an occasion for payment of Increment Value Duty if the land or any interest passes within the meaning of the provisions imposing Estate Duty.[4] If it does not so pass, no Increment Value Duty is payable, nor is it payable if the property is settled and is exempt from Estate Duty by reason of that duty having been paid on an earlier death.[5] Thus if A. settled property on B. for life and then on B.'s children and the property bore Estate Duty on A.'s death as part of his free estate, it would not be liable to Increment Value Duty on B.'s death after The Finance Act, 1910, because it is exempt from Estate Duty on that event.[6]

Where the duty is payable, it is to be allowed as a deduction in determining the value for Estate Duty purposes.[7]

The same provisions for assessment, collection, and recovery apply to Increment Value Duty as to Estate Duty[8]; but where an interest in land passes to the deceased's executors, Increment Value Duty is payable out of that interest alone and not out of the rest of

[1] s. 3 (3). [2] s. 3 (1). [3] s. 3 (5).
[4] s. 1 (*b*). [5] s. 3 (4). [6] F. A. 1894, s. 5 (2).
[7] s. 62. [8] s. 5.

the deceased's estate.[1] Thus if the deceased had a leasehold house and Increment Value Duty were payable on his death on his proportion of the increment value, such duty would be charged against the value of the lease and be payable by the person to whom the house was given and not out of the rest of the estate.

Land which is purely agricultural[2] and certain small dwellings and small holdings of agricultural land occupied by the owner,[3] also flats,[4] are exempted from Increment Value Duty.

An aggrieved person may give notice of appeal in accordance with the Act, and the case will be referred to a referee taken from a panel of Fellows of the Surveyors' Institute or other persons having experience in the valuation of land approved by the Reference Committee (which, for England, consists of the Lord Chief Justice, the Master of the Rolls, and the President of the Surveyors' Institute), and the matter shall be determined by him in consultation with the Commissioners and the appellant or their agents.[5] An appeal may be made against the referee's decision to the High Court or, where the total or site value does not exceed £500, to the County Court for the county or place where the appellant resides or the property is situated.[6]

[1] s. 5. [2] s. 7. [3] s. 8. [4] s. 11.
[5] Sections 33 & 34. [6] s. 33 (4).

# INDEX.

ABBREVIATIONS USED.

E.D. = Estate Duty. L.D. = Legacy Duty.
F.A. = Finance Act. S.D. = Succession Duty.
I.V.D. = Increment Value Duty. S.E.D. = Settlement Estate Duty.
U.K. = United Kingdom.


ABATEMENT of legacies, 191, 217.

ABROAD (*see* FOREIGN PROPERTY *and* PROPERTY OUT OF U.K.).

ACCELERATION, 52, 280.

ACCEPTANCE of real estate and leaseholds in payment of E.D., S.E.D., or S.D., 93, 293.

ACCIDENT: Compensation for death by, not liable to E.D., 45, 120.

ACCOUNT:
- E.D. Commissioners' requirements, 112.
  Corrections, 94, 157.
  Forms of, 156 *et seq.*
  Limitation of liability on settlement of, 110.
  Persons required to render an, 102, 156.
  When payable on an, 101, 156.
- S.E.D. Delivery of, 137.
  Form, 158.
- L.D. Corrections, 187, 197, 210, 233.
  Forms of, 222 *et seq.*
  On death of life tenant, 188, 231.
  Settlement of, 187, 212.
  Time for rendering, 185, 202, 222 *et seq.*
- S.D. Corrections, 272, 303, 309.
  Enforcement of, 291.
  Forms of, 302 *et seq.*
  Persons primarily liable to render, 292.
  Verification, 291.

ACCOUNTABLE PERSONS
Are Crown debtors, 99, 105, 203, 286.
E.D. Chapter III., 97.
Beneficiaries, 100, 102.
Certificate of discharge, 113 (*see also* CERTIFICATE).
Donees, 103.
Executors, 97 *et seq.*
Limitation of liability, 110.
Other persons, 100, 102.
Persons primarily accountable for settled property, 102.
Powers of, 101, 107.
Property out of U.K., 99.
Purchasers, 103.
Settled property, 100.
S.E.D. Executor, as to personal property under will, 104, 136.
Trustees, 105, 136.
When beneficiaries accountable, 105.
L.D. Chapter IX., 202.
Administration action, 208.
Annuity charged on legacy, 195, 204.
Certificate of discharge, 212.
Contingent legacy, 205.
Executors, 202.
Furniture &c. settled, 204, 216.
Legatee, 203, 204.
Limitation of liability, 212.
Notable works of art on sale, 204.
Purchaser, 203, 207.
Settled legacies, 196, 205.
Trustees, 203.
Under general power of appointment, 206, 227.
S.D. Chapter XIV., 286.
Committee, 286.
Guardian, 286.
Limitation of liability (*q.v.*).
Mortgagee foreclosing, 280.
Powers of, 286.
Purchasers, 286.
Successor, 286.
To give notice of succession, 291.
Trustee, 286, 292.

ACCOUNT STAMP DUTY, 57, 119 (*see also* PROBATE DUTY).

ACCRETIONS:
L.D. To specific legacies, 185.
Residue, 186, 187, 229.

ACCUMULATIONS:
L.D. On, 191.

ACTIVE SERVICE:
Death on (*see* SAILORS *and* SOLDIERS).
E.D. Exemption, 122, 123.
Exemption from Death Duties up to £150, 122.

ACT OF PARLIAMENT:
E.D. Lands or chattels settled by, 65, 122.
Value for duty, 65.
S.E.D. Lands or chattels settled by, exempt, 138.

ADMINISTRATION:
Action, payment of duties in, 208, 292.
Correction of L.D. before conclusion of, 187.
*De bonis non*, 162.
Expenses of, not deductible against E.D. value, 89.
Extra expenses of, when deductible, 89, 90, 149.
Forum of, 13, 251.
Period for, 185.
Second grant of, 162.
Stamp Duty (*see* PROBATE DUTY).

ADMINISTRATOR (*see also* EXECUTOR):
*De son tort* accountable, 98, 203, 206.

*AD VALOREM* DUTY, 67.

ADVANCES:
L.D. 231.
S.D. 95, 281.

ADVOWSON:
E.D. 8, 9, 125.
S.D. 95, 281.

AFFIDAVIT (*see* INLAND REVENUE AFFIDAVIT *and* CORRECTIONS).

AGENT not accountable for E.D., 102.

AGGREGATION:
Commutation cases, in, 81, 96, 161.
Definition, 4, 72.
Dower and curtesy estates, 64.
Example, 79.
EXEMPTIONS:
Chattels given to nation, 78.
Free estate not exceeding £1000, 71, 74, 148.
Notable works of art &c. on which E.D. remitted, 66, 78.
Property in which deceased never had an interest, 73.
Property not liable to E.D., 79.
Property settled before F.A. 1894, 78.
Timber, 91.
In s. 33 Wills Act cases, 9, 10.
Interests in expectancy, 8, 70, 82, 84, 147.
Joint property, 35, 70, 77.
Not affected by allowance of older duties or Colonial duty, 128.
Property on which E.D. commuted, 81, 96, 161.

AGRICULTURAL PROPERTY:
Cottages on, special value not to be taken into account, 87, 153, 264.
E.D. Deduction for repairs, 152.
Now payable on principal value, 86, 152.
I.V.D. Exemption, 314.
S.D. Value, 264, 305.
Timber, 91, 155, 265, 299.

ALLOWANCES (*see also* DEBTS *and* DEDUCTIONS):
E.D. Colonial duty, 89, 150.
Commutation of E.D. on interests in expectancy, 85, 147, 161.
Consular Court fees, 90, 150.
Costs of improvements prior to sale, 142.
Depreciation in the case of large holdings, 82, 142.
Extra expenses of administration of property out of U.K., 89, 149.
Fixed duty against *ad valorem* duty, 69.
Foreign duty, 89, 149.
I.V.D. against value for E.D., 91, 313.
Mourning, 155, 228.
Older duties against E.D., 127.
On sale of timber as a whole, 92.
Timber, 91.
S.E.D. Colonial duty when allowed against, 90, 150.
Stamp Duty, 130.
L.D. Against interests in expectancy, 232.
Commutation, 192, 233.
In residuary account, 226.
Of life interest against advances, 231.
S.D. Contingencies, 266.
E.D. and S.E.D., 262 *et seq.*, 303 *et seq.*
Enlargement of interest, 282.
Improvements by successor, 270.
Incumbrances, 270.
Management expenses, 305.
Manorial payments, 269.
Mortgage by life tenant and reversioner, 280.
On sale of timber as a whole, 265.
Property given up by successor, 273.

AMBASSADOR: Liability to E.D., 16.

ANIMALS: Maintenance of, when liable to L.D., 171.

ANNUITY:
E.D. Arising, Heading "G.," 37.
EXEMPTIONS:
Charitable, 45.
Compensation on death by accident, 45, 120.
For full monetary consideration, 46.
Military pensions by British Government, 125.

ANNUITY—*continued.*
E.D. Arising—*continued.*
EXEMPTIONS—*continued.*
Military pensions by Government of India, 46, 124.
Not exceeding £25, 45.
Payment by instalments, 41, 93, 157.
Purchased or provided by deceased alone, 41.
Purchased or provided in concert, 42.
Value, 41, 157.
When an estate by itself, 74.
Ceasing, Heading "H.," 46.
Charged on real estate, apportionment of duty, 108.
Deduction against value for E.D., 154.
EXEMPTIONS:
Charitable, 49, 120.
Full consideration in money, 48.
Trustees, 49, 120.
Secured by bond, 48.
Value, 47, 157.
Value when payable out of mixed fund, 60.
Joint or survivorship when exempt, 42.
Reservation in gifts *inter vivos*, 24 *et seq.*
State (*see also* PERPETUAL ANNUITY):
How E.D. payable, 65.
When exempt, 66.
S.E.D. Free of duty, 108, 136, 190.
Incidence of, 132, 159.
L.D. 193.
Basis of calculation, 193, 223.
Charged on legacy, 194, 197, 204.
Contingency, 199.
Death before all instalments paid, 199, 234.
Deduction against residue, 195, 200, 229.
Directed to purchase, 194, 225.
Discount, 199, 224.
Payable by way of, 199, 230.
Payment by instalments, 194, 224, 231.
Receipts for, 209, 223.
*Simpliciter*, 193, 194.
Sum to purchase, 194, 204.
Value, 193, 224.
S.D. Cesser of, 247, 306.
Cesser of, on gifts with reservation, 241, 307.
Cesser of, on sale of property charged with, 96.
Created by successor, 282, 283.
Value, 302.
Value of property subject to, 250, 307.

APPEAL, 116, 153, 314.

APPOINTMENT (*see* POWER OF APPOINTMENT).

APPORTIONMENT:
E.D. Between beneficiaries, 108, 109.
Dividends, 144.

APPORTIONMENT—*continued.*
E.D. Income up to death, 153.
Mixed fund, 58, 60.
I.V.D. 312.
L.D. Income in residuary account, 186, 229.

ARREARS, 153.

ART, WORKS OF (*see* FURNITURE *and* WORKS OF ART ETC.).

ASSESSABLE SITE VALUE, 312.

ASSESSMENT, 163.
For property tax (S.D.), 305.
Separate, for S.D., 292.

ASSETS:
Business, value for E.D., 145.
In U.K., what are. 14.

ASSIGNMENT
By expectant successor, 275 *et seq.*
Interests in expectancy before F.A. 1894, 125, 279.

BANKRUPTCY, 51, 130, 161, 200.

BEARER BONDS, 15, 90.

BENEFICIARIES:
Limitation of liability under will, 110, 212, 290.
When accountable for E.D., 100, 102.
When accountable for L.D., 203, 204.
When accountable for S.D., 286 *et seq.*

BENEFIT:
E.D. Arising on death, 37.
Ceasing, 46.
Reserved in gifts *inter vivos*, 25 *et seq.*, 65.
Individual for 1 per cent. rate of L.D. or S.D., 179, 219, 258, 301.
Total benefit from same person to be taken into account, 180, 259.

BILL OF EXCHANGE, 21.

BONDS (*see also* BEARER BONDS):
*Donatio mortis causa*, 22.
For payment of money on death, 48, 245, 300.

BOOKS (*see* FURNITURE *and* WORKS OF ART ETC.).

BRITISH INDIA (*see* INDIA).

BRITISH POSSESSIONS (*see also* COLONIAL DUTY *and* PROPERTY OUT OF U.K.):
E.D. Allowance of duties paid in, 89, 150.
Only applies to assets in, 90.
Colonial stocks and shares, locality of, 14.
Liability of English executors for duty on property in, 99.
List of, to which s. 20, F.A. 1894, applied by Orders in Council, 90, 150.
Not a charge on property in, 115.

BRITISH TRUST:
E.D. Incidence of, on assets outside U.K., 13.
S.D. Incidence of, on assets outside U.K., 251.

BUSINESS: Value of assets of, 145.

CAPITAL:
E.D. Charitable payments of, not liable, 45.
Sums provided by deceased, 43.
S.E.D. Direction to set apart capital for annuity, 133.
L.D. Direction to set apart capital for annuity, 200.

CERTIFICATE:
E.D. Amount paid, 106.
Discharge, 113.
After two years, 114.
Commutations, on, 115.
Composition, on, 115.
Effect of, 113, 115.
Forms of application, 162.
For small sums where no grant, 141.
From personal liability, 114.
Obtained by fraud, 115.
Of property, 113.
Protection of purchaser, 113.
Duty paid, for grant *de bonis non*, 163.
L.D. Discharge before distribution, 212.
S.D. Discharge before distribution, 292.

CHARGE:
E.D. Certificate of, 106.
Colonial assets, none, 100, 115.
Foreign property, 100.
Gifts *inter vivos*, 227.
Life tenant paying duty, 107.
On *donatio mortis causa*, 227.
Personal property not passing to executor as such, 99, 106.
Shifts to proceeds of sale, when, 110.
S.E.D. When, 105, 136.
S.D. Created by expectant successor, 278, 282.
Created by owner in possession, 247, 283.
On sale, 245, 274, 290.
When a charge, 287.

CHARITY :
E.D. Exemption of gifts made more than a year before death, 23.
Exemption of gifts where benefit released more than a year before death, 30.
Gifts to, 23, 26.
Payments by, not liable, 49, 120.
Promised subscriptions, not deductible, 88.
Gifts to Irish, exempt from L.D. and S.D., 218, 295.
Secret trust in favour of, 176, 242.

CHATTELS (*see* Furniture *and* Works of Art etc.).

CHEQUE, 21.

CHILDREN (*and see* One per Cent. L.D. and S.D.) :
Exemption from 1 per cent. L.D. and S.D. where property passing does not exceed £15,000, 55, 182, 219, 260, 301.
Gifts to, preserved from lapse, 9, 174, 247.
Of sailors and soldiers, partial remission of duties, 122.
When liable to L.D. and S.D., 178 *et seq.*, 256 *et seq.*

CHURCH : Bequest for benefit of, 187.

CHURCH PATRONAGE, 9, 125, 176 (*see also* Advowsons).

COLONIAL DUTY :
Allowance against E.D., 89, 90, 150.
When allowed against S.E.D., 90, 150.

COLONY (*see* British Possessions).

COMMITTEE OF LUNATIC :
E.D. Liability for, 102.
S.D. Liability for, 286.

COMMUTATION :
E.D. 95.
Aggregation, 81, 96, 161.
Basis of calculation, 96, 161.
Certificate of discharge, 115.
Contingencies, allowance for, 148, 161.
Form to be used, 160.
Interests in expectancy, 85, 146, 160.
Life interest determinable, allowance for, 161.
On cesser of annuity, 96.
Practice. 85, 160.
L.D. 192, 211, 233.
S.D. 95, 273.
Form of account, 308.
Incidence of 1 or 1½ per cent. rate, 275.
On property taken out of settlement, 95, 281, 293.

COMPANY :
Locality of stock and shares in a, 14.
Private, value of shares, 143.

COMPETENT TO DISPOSE (*see also* JOINT PROPERTY *and* POWER OF APPOINTMENT) :
E.D. Heading " C.," 16.
Definition, 16.
Executor accountable as to personal property, 98.
Infant, 17.
Joint tenant, 17.
Lunatic, 16.
Married woman, 20.
Person having general power of appointment, 19.
Person having general power to charge, 20.
Person having general power of revocation, 18.
Settled property not exempt where deceased, 53, 55, 63.
Tenant in tail, 18.
S.D. All instalments payable on sale of real estate when successor, 262.
Instalments, 262.
Unpaid instalments remain a charge on death of successor, 263.
Where successor is, 262.

COMPOSITION :
All Death Duties, 115, 211, 273.
L.D. 191, 193, 211, 230.
S.D. 273.

COMPROMISE : L.D. and S.D., 191, 262.

CONDITION : Gift subject to, 170, 273.

CONSIDERATION (full, in money or money's worth) :
Exemption from E.D. :
Annuities and interests arising, 46.
Annuities and interests ceasing, 48.
Transactions *inter vivos*, 25 *et seq.*
Debts, 87.
Sales for, 120, 126, 239, 298, 299.

CONSULAR COURT FEES, 90, 150.

CONTINGENCY :
Incidence of L.D., 197, 199, 205.
Incidence of S.D., 266.
Reversion expectant on, value for E.D., 148, 161.

CONTINGENTLY SETTLED, 131, 159.

CONTRACT:
E.D. To pay money on death, 48.
S.D. To pay money on death, 245, 300.

CONVEYANCE of property to Commissioners in satisfaction of duty, 93.

COPYHOLDS, 8, 269.

CORPORATION:
Cesser of interest of corporation sole, exempted from E.D., 49, 120.
Chattels given to, exempted from duties, 77, 123, 216, 297.

CORRECTIONS AND CORRECTIVE AFFIDAVIT:
E.D. 94, 144, 156, 157.
Fixed duty, 69.
Value of real estate or leaseholds, 153.
L.D. 187, 197, 210, 233.
S.D. 272, 303, 305, 309.

COSTS (*see also* PRACTICE):
Payment into or out of Court, 210.
Valuation, of, when paid by Commissioners, 82, 142.

COTTAGES, Country (*see* AGRICULTURAL PROPERTY).

COUNTY COUNCIL: Chattels given to, may be exempted from duty, 78, 123.

COUNTY COURT:
Appeal, 116, 314.
Apportionment of E.D. between beneficiaries, 109.

COVENANT
To leave share of residue, L.D., 171.
To leave specific sum, L.D., 172.
To pay money on death:
No deduction in Inland Revenue affidavit, 87.
Payable without deduction for E.D., 88.
But is liable to its own S.E.D. if settled, 88.
When liable to S.D., 245.

CROPS, 145.

CROWN:
Debts:
Death Duties are, 99, 105, 203, 286.
No limitation of liability, 113, 288.

CROWN—*continued.*
Entails:
How E.D. payable, 65, 122.
No S.E.D., 138.
Taking under intestacy liable to E.D., 9.

CURTESY ESTATE: Regarded as settled property for E.D., 63.

CUSTOMS ANNUITY FUND:
E.D. 44.
Money in, forms estate by itself, 74.

DEATH
After F.A. 1912, duties treated of, 2.
An occasion for I.V.D., 311.
Before F.A. 1894, old duties still payable, 58.
Sailor or soldier on active service (*see* ACTIVE SERVICE).
S.D. must be referred to a, 242.

DEATH DUTIES:
Colonial, allowance against E.D., 89, 90, 150.
Composition in complicated cases, 115, 193.
Definition, 1.
Foreign, 89, 149.
Remission after twenty years, 111, 193, 273.
In the case of soldiers and sailors, 122.

DEBTS (*see also* ALLOWANCES *and* DEDUCTIONS):
E.D. Allowance for, 87, 153.
Book debts, value of, 146.
Covenant debt, 87.
Foreign, 88.
Guarantee, 88, 153.
Incurred for deceased's own benefit, 87, 154.
Mortgage (*q.v.*).
Subscriptions promised, 88.
Voluntary, 87, 154.
L.D. Covenant, 171.
Deduction against residue, 187, 228.
Direction to pay debts of another, 170.
Direction to pay testator's own, 171.
Release of, 169.

DECEASED: Definition, 2.

DEDUCTIONS (*see also* ALLOWANCES *and* DEBTS).
E.D. Annuity, 154.
Colonial duty, 89, 150.
Costs of sale (none), 81.
Fixed duty cases, 70, 92, 155.
Foreign debts, 89, 149.
Foreign duty, 89, 149.

DEDUCTIONS—*continued.*
E.D. General, 87, 153 *et seq.*
Improvements prior to sale, 142.
Mourning, 155.
Payments under a tenancy agreement, 154.
L.D. Annuity, 200.
Capital to be set apart for annuity, 200.
Duty on legacies and annuities given free, 189, 190, 228.
From residue, 187, 226.
S.D. 270, 304.
Annuity, 304.
Deduction of E.D. and S.E.D., 263, 268, 304.
Timber accounts, 265, 308.
I.V.D. 313.

DEEMED TO PASS, 4, 6.

DELIVERY:
Account, of, 101, 104, 137.
Essential to *donatio mortis causa*. 22.
Inland Revenue affidavit, 92.

DEPRECIATION: When to be taken into account in value for E.D., 82, 142.

DETERMINABLE CHARGE (*see* ANNUITY *and* JOINTURE).

DEVOLUTION, 178, 238, 256.
L.D. Payable on each, 206.
S.D. Definition, 238.
Distinction between disposition and, 238.
Predecessor under, 238.

DILAPIDATIONS, 152, 154.

DISCHARGE (*see* CERTIFICATE).

DISCLAIMER:
As affecting L.D., 175, 191.
As affecting S.E.D., 135.

DISCOUNT:
E.D. Commutation cases, 96, 147.
Not allowable on, 93.
L.D. 199, 224.
On 1 per cent. rate, 181.
S.D. 262, 271, 303, 305.
On 1 per cent. rate, 259.

DISENTAIL:
Effect of, 18.
S.D. 283.

DISPOSITION, 178, 238, 256.
Before F.A. 1894, exemption from aggregation, 78.
Before F.A. 1894, exemption from S.E.D., 130, 138.
Before F.A. 1894, exemption where Probate Duty or Account Stamp Duty paid, 57, 119.
Distinction between devolution and, 238.
For evading S.D., 240.
Trust, exemption from E.D., 31, 121.
Voluntary, during lifetime of deceased (*see* GIFTS INTER VIVOS).

DIVORCE:
Effect of, on L.D., 182, 184.
Effect of, on S.D., 284.

DOMICIL:
E.D. As affecting assets out of U.K., 10, 120.
Policy of assurance, 38.
Statement as to, 11.
S.E.D. Incidence of, 135.
L.D. Definition, 220.
Exemption where domicil outside U.K., 173, 220.
S.D. Incidence of, 251.
What is, 220.

*DONATIO MORTIS CAUSA*:
E.D. Heading "D.," 21.
Definition, 21.
Delivery essential, 22.
E.D. on, deductible against gift, 227.
E.D. on, not a testamentary expense, 23.
Exemption of small amount, 22.
Formalities, 22.
Property capable of being given, 21.
L.D. 22, 169.

DOWER:
E.D. Cesser of, 63.
Regarded as settled property, 63.
S.D. 261.

DUTY FREE (*see* FREE OF DUTY).

ELECTION (*see* OPTION).

EMPLOYERS' LIABILITY ACTS: Compensation for death, not liable to E.D., 45.

EMPLOYES' FUNDS, 44.

ENGLISH ASSETS: What are, 14.

ENGRAVINGS (*see* FURNITURE *and* WORKS OF ART ETC.).

ENLARGEMENT:
E.D. 52, 118.
S.D. 281.
Value, 282.

ENTAILED PROPERTY:
E.D. Competent to dispose, 18.
Definition, 18.
Is property settled otherwise than by deceased's will, 77.
When not payable, 19.
S.D. Predecessor on death of tenant in tail, 238.
Resettlement, 283.

ESCHEAT, 9.

ESTATE BY ITSELF:
E.D. Annuities arising, 74.
Chattels of national interest, 78.
Joint property, when not part of, 36, 70, 77.
Notable works of art &c., 66, 78.
Not exceeding £1000, 71, 74, 148, 300.
Property in which deceased never had an interest, 73.
Property settled before F.A. 1894, 78.

ESTATE DUTY:
Acceptance of real estate and leaseholds in payment of, 93.
Accountable persons (*q.v.*), Chapter III., 97.
Aggrieved person, power of appeal, 116.
Allowances against, 89, 90, 127 (*see also* ALLOWANCES).
Apportionment, 108.
Certificates of discharge, 113 (*see also* CERTIFICATE).
Commutations (*q.v.*), 160.
Corrections (*q.v.*), 94, 156, 157.
Deduction against:
*Donatio mortis causa*, 227.
Gifts *inter vivos*, 227.
Value for L.D., 226.
Enlargement of interest, 52, 118.
Exempted property not liable to aggregation, 79.
Exemptions (*q.v.*), Chapter IV., 117.
Forms, 139 *et seq.*
Instalments (*q.v.*).
Limitation of liability (*q.v.*), 110.
Powers of raising, 101, 107.
Practice (*q.v.*), Chapter VI., 139.
Property on which payable, Chapter I., 6.
Annuities (*q.v.*), 41.
Crown entails, 65, 122.
*Donatio mortis causa* (*q.v.*), 21.

ESTATE DUTY—*continued.*
Property on which payable—*continued.*
Free estate, 7.
Gifts *inter vivos* (*q.v.*), 23.
Interests arising, 37.
Interests ceasing, 46.
Interests in expectancy (*q.v.*), 8, 82.
Joint property (*q.v.*), 32.
Policies (*q.v.*), 37.
Property of which deceased competent to dispose, 16 (*see also* COMPETENT TO DISPOSE).
Property out of U.K. (*q.v.*), 10, 20.
Settled property, 49.
Timber (*q.v.*), 91, 155.
Rates and amount (*q.v.*), Chapter II., 67.
*Ad valorem* duty, 67.
Fixed duty, 67.
Remission, 111, 123 (*see also* WORKS ON ART ETC.).
Reverter to settlor, 53.
When a charge, 106 (*see also* CHARGE).
When due, 92, 101.

ESTATES *PUR AUTRE VIE* (*see* PUR AUTRE VIE).

EVASION :
E.D. 25, 54, 64.
S.D. 240.

EVIDENCE
As to value, 104, 291.
Domicil, 11.
Payment of E.D., 106.
Colonial duties, 149, 150.
Presumption as to advancement, 35.

EXECUTOR :
E.D. Accountable, 97.
Definition, 98.
Executor *de son tort*, 98, 206.
Foreign property, 99.
Limitation of liability under will, 110.
Must give full particulars, 97.
Option to pay on property under his control, 100.
Option to pay on property not under his control on request, 100.
Powers of raising duty &c., 101, 107.
Powers of recovery from owner, 107.
Property passing to, as such, 98, 106.
Property not passing to, as such, 106.
Separate, for property out of U.K., 99.
Works of art &c., 100.
L.D. Accountable, 202.
Accountable, when not, 204.
Allowance of duty paid under void probate, 211.

EXECUTOR—*continued.*

L.D. Certificate of discharge before distribution, 212.
Entitled to reimbursement, when, 203.
Fund appointed by will, 206.
Legacy to, 172.
Legacy to executors of a deceased person, 173.
Retainer for his own benefit, 209.
Settled fund, 196, 204.

EXEMPTION:

E.D. Chapter IV., 117.
Advowson until sold, 9, 125.
Annuity provided, not exceeding £25, 45, 125.
Army pensions, 46, 124, 125.
Certain gifts *inter vivos*, 23, 119.
Change of security (none), 121.
Chattels given for national purposes, 77, 123.
Enlargement of interest, 52, 118.
Estate not exceeding £100, 68, 123.
Failure of interest, 51, 121.
Husband and wife, settlement before F.A. 1894 on the other for life, 54, 126.
Immoveable property out of U.K., 11, 119.
Interest of office holder, 49, 120.
Life tenant entitled to share of deceased beneficiary, 62, 63.
Moveable property out of U.K. where domicil foreign, 11, 20, 120.
Notable works of art, until sold, 66, 78, 124.
Property on which Probate Duty or Account Stamp Duty paid, 57, 119.
Release of life interest, 64, 95 (*see also* RELEASE).
Reverter to settlor, 53, 119.
Sailor and soldier dying in service, 122.
Sales before F.A. 1894, 125, 279.
Sales for full money consideration, 28, 42, 46, 48, 120.
Settled property on which E.D. once paid, 17, 55, 121.
Small sums, 123.
Timber until sold, 91, 155.
Trust property, 31, 121.

S.E.D. Chapter V., 137.
Annuity *simpliciter*, 133.
Crown entails, 138.
Dispositions before F.A. 1894, 130, 134, 138.
Free estate not exceeding £1000, 71, 137.
Property exempted from E.D., 137.
Property out of U.K. where domicil foreign, 135.
When once paid, 132, 138.
Wife's or husband's the only life interest, 129, 138.

L.D. Chapter X., 213.
Chattels given to corporations, 216.
Children, 55, 178, 182, 219.
Husband and wife, 178, 182, 219.

EXEMPTION—*continued.*

L.D. Irish charity legacies, 218.
Money left to pay duty, 217.
Notable works of art, until sold, 216.
Pecuniary legacies under £20 (formerly), 215.
Personal estate of domiciled foreigner, 166, 173, 220.
Personal estate not exceeding £100, 214.
Royal Family, gifts to, 213.
Sailor or soldier (partial), 122.
Settled chattels, 215.
Liable if sold, 216.
No exemption if consumed by use, 216.
Small estates, 71, 76, 214, 219.
Specific legacies under £20, 214.

S.D. Advowson till sold, 272, 299.
Chattels to corporations, 297.
Children, 256 *et seq.*, 300.
Husband and wife, 256 *et seq.*, 300.
Immoveable property out of U.K., 253.
Irish charities, 295.
Money left to pay duty, 298.
Moveable property out of U.K., 250.
Notable works of art, until sold, 297.
Property liable to L.D., 276, 296.
Royal Family, 295.
Sailor or soldier (partial), 122.
Settled chattels. 297.
Small estates, 71, 76, 295, 300.
Successor taking under his own disposition, 282, 299.
Timber, until sold, 264, 272, 299.
Transactions for full money consideration, 239, 298, 299, 300.

I.V.D. 313, 314.

From aggregation (*see* AGGREGATION).

EXPECTANCY (*see* INTERESTS IN EXPECTANCY).

EXPENSES (*see also* SALE):
Of raising duty, 107.
Of sale not a good deduction (E.D.), 81.
But may be deducted in succession account where there is a direction to sell, 306.

FAILURE OF INTEREST, 19, 51, 121.

FEE SIMPLE: Definition for I.V.D., 312.

FINE: Deduction in S.D. account, 269.

FIRST SUCCESSION, 178, 256, 260.

FIXED DUTY (*and see* SMALL ESTATES):
Correction, 69.
Deductions, 70, 92, 155.
Inclusion of joint property and reversions, 70.
No interest when paid within a year, 69.
Paid by adhesive stamp, 163.
Probate Court fees, 70.
When payable, 68.

FOREIGN DEATH DUTY (*see also* PROPERTY OUT OF U.K.):
Deduction against foreign personal estate, 89, 149.

FOREIGN DEBTS deductible against foreign personal estate, 88, 149.

FOREIGN DOMICIL (*see* DOMICIL).

FOREIGN PROPERTY (*see also* PROPERTY OUT OF U.K.):
E.D. Deductions, 89, 149.
Executor accountable for foreign personal property, 99.
Free estate, 10.
Policies when liable, 15, 46.
Settled estate, 12.
Value, 149.
S.E.D. Incidence of, 135.
L.D. Incidence of, 166, 173, 220.
S.D. Incidence of, 250.

FOREIGN SOVEREIGN, 16.

FORMS:
E.D. and S.E.D., 139 *et seq.*
L.D. 222 *et seq.*
S.D. 302 *et seq.*
Where obtainable, 163, 234, 309.

FORUM (*see* ADMINISTRATION).

FRAUD:
Certificate of discharge obtained by, 115.
Purchaser without notice not affected by, 115.

FREE ESTATE, 7.
Accountable person, 99.
Policies, 37.
Property out of U.K., 10.

FREE OF DUTY:
E.D. and S.E.D., 108, 136, 190.
L.D. 189, 217, 228.
What words are sufficient, 189.
S.D. 263.

FRIENDLY SOCIETY: Small sums, 123.

FUND IN COURT (*see also* ADMINISTRATION):
Payment in or out, 210.
Provision for L.D., 208.
Practice, 208.

FUNERAL EXPENSES, 87, 153, 155, 187, 227.

FURNITURE (*see also* WORKS OF ART ETC.):
E.D. *Donatio mortis causa*, 21.
Formalities for gift of, 31.
Value, 145.
L.D. Given to corporations &c. for preservation, exempt, 216.
Settled, 204, 215.
S.D. 297.

GAVELKIND, 8.

GENERAL POWER
Of appointment (*see* POWER OF APPOINTMENT).
To charge, 20.
To revoke settlement, 18, 30.

GIFTS *INTER VIVOS*:
E.D. Donee accountable, 102, 103.
Formalities, 31.
No L.D. or S.D. where no reservation, 32.
Not a deduction against residue, 227.
Perfected within three years, liable to E.D., 32.
Value, 156.
Within three years, Heading "E.," 23.
Exemptions, 119.
Charities, when gift more than one year from death, 23.
Marriage consideration, 23.
Normal expenditure, 23.
Small amounts, 24.
Policies, 39.
With reservation:
Benefit reserved must be enforceable, 29.
Conditions, 25.
Examples, 25 *et seq.*
Of power of revocation, 30.
Release more than three years before death, 28, 30.
Trust property, 31.
S.E.D. Settled gifts liable to, 135.
Unless in consideration of marriage, 135.
Settled covenant debt bears its own S.E.D., 88.
S.D. 32, 240.
Policy of assurance, 299.
Reservation must be enforceable, 241.
Value, 307.

GOODWILL: Value for E.D., 145.

GRANDCHILDREN: Individual benefit for 1 per cent. L.D. or S.D., 180, 258.

GROSS ESTATE, 68 (*see also* FIXED DUTY *and* SMALL ESTATES).
As to inclusion of reversions and joint property, 70.
For fixed duties, 70.
When mortgages deductible, 70, 155.

GUARANTEE DEBT, 87, 154.

GUARDIAN, 102, 286.

HEIRLOOMS (*see* FURNITURE *and* WORKS OF ART ETC.).

HISTORIC INTEREST (*see* WORKS OF ART ETC.).

HOLDER OF OFFICE, 49, 120.

HUSBAND AND WIFE (*see also* CURTESY *and* DOWER):
E.D. Presumption in joint purchase or investment, 34.
Settlement by surviving spouse, 54, 126.
Survivorship policies, 44.
S.E.D. Exemption where wife's or husband's the only life interest, 129, 138.
L.D. Effect of divorce, 182.
Formerly not liable, 182.
Rate, 177.
When exempted from 1 per cent. rate, 182, 219.
S.D. Effect of divorce, 284.
Rate and when chargeable, 254 *et seq.*, 300.

INALIENABLE: E.D. on Crown entails, 65.

ILLEGITIMATE CHILD:
Domicil of, 220.
Liable to L.D. or S.D. as stranger, 176, 254, 284.

IMMOVEABLE PROPERTY (*see also* PROPERTY OUT OF U.K.):
Definition, 10.
Outside U.K. not liable to E.D. or S.D., 11, 119, 253.
Unless comprised in British partnership or trust, 11, 12, 253.

INCIDENCE OF DUTY:
E.D. Mixed fund, 58.
Where older duties paid, 58.

INCIDENCE OF DUTY—*continued.*
S.E.D. 129, 132.
L.D. 168 *et seq.*
Contingent legacies, 197.
General power of appointment, 174.
Gift to deceased legatee, 173.
Lapsed legacies, 175.
Settled legacies, 190, 195, 223.
Terms of will alone to be regarded, 176.
S.D. 238.
Contingent successions, 266.
Covenant debts, 245.
I.V.D. 314.

INCOME, 153, 229.
L.D. on income since death, 185, 229.

INCOME TAX (*see also* ASSESSMENT):
No deduction for, against annual value for L.D. or S.D., 231, 269.

INCREMENT VALUE DUTY:
Allowances, 313.
Agricultural property exempt, 314.
Appeal, 314.
Assessable site value, 312.
By whom payable, 314.
Death an occasion for payment of, 311.
Deductible against value for E.D., 91, 313.
Exemptions, 313, 314.
Leaseholds, 312.
Substituted site value, 311.

INCUMBRANCE (*see* DEDUCTIONS *and* MORTGAGE).

INDIA:
E.D. Allowance of Indian duty, 89.
Military pensions and annuities exempt, 46, 124.

INDIVIDUAL BENEFIT (*see* BENEFIT).

INFANT:
Child, benefit not exceeding £2000, no L.D. or S.D., 180, 258.
Competent to dispose, 16.
Not *sui juris*, 17.
Payment of legacy into Court, 210.

INLAND REVENUE AFFIDAVIT, 92, 97, 101.
E.D. payable on, 101.
Forms for probate, 139.
Omissions from, 94 (*see also* CORRECTIONS).
Option as to reversion exercised when grant obtained, 85.
Time for payment on, 101.

INSTALMENTS:
E.D. Annuities provided, 41, 93, 157.
When due, 94, 157.
Crown entails and State annuities, 65.
Form, 157.
Real estate, 92.
All instalments payable on sale, 93.
Unpaid instalments remain a charge on death of owner, 93.
S.E.D. 159.
L.D. 194, 199, 224, 234.
S.D. Annuities, 303.
Forms for payment, 306.
Where competent to dispose, 262.
Unpaid instalments remain a charge on death of successor, 263.
Where not competent to dispose, 268, 270, 302, 303.

INSURANCE COMPANY (*see also* POLICIES):
Payment without English grant, 38.
Policies in foreign, 15, 46.

INTEREST:
E.D. Enlargement of, 52, 118.
Failure of, 19, 51, 121.
Fixed duties, none if paid within a year, 69.
Rate of, 92.
When payable by Commissioners, 94, 156.
L.D. Rate, 234.
S.D. 309.
Remission of, 111, 193.

INTERESTS (*see also* ANNUITY):
E.D. Arising on death, Heading "G.," 37.
Estate by itself, 74.
May be a capital sum, 43.
Provided by deceased alone, 43.
Provided by deceased in concert, 43.
Ceasing on death, Heading "H.," 46.
Estates *pur autre vie*, 48.
Value, 47, 157.

INTERESTS IN EXPECTANCY:
E.D. Aggregable with rest of estate, 8, 82.
But not where rest of estate under £1000, 8, 71, 76, 84, 148.
Commutation, 85, 146, 160.
Contingent, 148, 161.
Does not include policy on life of another, 9, 38, 86.
Does not include reversion expectant on lease, 9, 86.
Exemption where sold or mortgaged before F.A. 1894, 125, 279.
How paid, 8, 83, 147.

INTERESTS IN EXPECTANCY—*continued.*
E.D. Meaning of, 8.
Option to defer payment, 8, 83, 84, 134, 146.
Value, 83, 146.
Where the property itself passes, 85.
S.E.D. 134.
L.D. 192, 232.
Commutation, 211, 233.
S.D. Liability of purchaser, 287.
Sale before F.A. 1894, 279.
Transfer creating new succession, 276, 277.
Transfer not creating new succession, 276, 277.
I.V.D. 312.

INTESTACY:
E.D. Payable under, 7.
L.D. Payable under, 168.

IRELAND: Charitable bequests in, exempt from L.D. and S.D., 218, 295.

JOINT PROPERTY:
E.D. Heading "F.," 32.
A charge, 99, 106.
Aggregation, 35, 70, 77.
Annuities, 42.
As between partners, 35.
Competent to dispose, 17, 32.
Definition, 32.
Executor accountable for personal property, 99.
Husband and wife presumption, 34.
Joint purchase or investment, 33.
Parent and child presumption, 34.
Wholly provided by deceased, 34.
S.D. 243.
Predecessor, 243.

JOINTURE:
Change of security, 121.
How E.D. payable, 47, 157.
Method of apportioning E.D., 109.
S.D. on cesser of, 247, 307.

LAPSE:
Gifts to children when preserved from (*see under* WILLS ACT, s. 33).
Legacies, 175.

LEASE:
For full consideration, exemption, 120.
For lives, 48.
Property subject to, not an interest in expectancy, 9, 86.
Succession to property subject to, 249.

LEASEHOLDS :
E.D. Acceptance by Commissioners in satisfaction of E.D., 93.
Appeal as to value, 116.
Average number of years' purchase, 152.
Executor accountable for, 106, 113.
Formalities for gift of, 31.
Government valuation, 153.
Not a charge, 106, 113, 263.
Particulars required, 151.
S.D. Deduction of E.D. and S.E.D., 263, 269, 304.
Liable to S.D. and not L.D., 169, 237.
Short term, 271.
When payable on *corpus*, 263.
I.V.D. 312.

LEGACY :
Abatement, 191, 217.
Compounded, 191.
Contingency, 197, 199, 205.
Deduction for S.E.D., 190, 223, 228.
Direction to pay interest on, 185.
Disclaimer of, 175, 191.
Given free of duty, 189, 217, 228.
Inclusion of accretions, 185, 229.
Lapse, 175.
Misappropriation of, 207.
Receipt to be obtained, 209.
Settled, incidence of L.D., 190, 195, 199, 205, 223.
Specific, 185, 214, 223.
Subject to annuity, 204.
To children who predeceased, 174.
To executor, 172.
To Irish charities, 218.
To personal representatives of deceased legatee, 173.
To purchase annuity, 194.

LEGACY DUTY :
Abatement, 191, 217.
Accountable persons (*q.v.*), Chapter IX., 202.
Accumulations, 191.
Advances, 231.
Allowance of 1 per cent. rate against E.D., 127.
As affected by marriage, 182, 184.
Commutations, 192, 211, 233.
Composition, 191, 193, 211.
Compromise, 191.
Contingency, 197, 199, 205.
Corrections, 210, 233.
Deductions against residue, 187, 195, 226.
Discount, 194, 199, 224.
Divorce, effect of, 182, 184.
Domicil out of U.K., 173, 220.
*Donationes mortis causa*, 22, 169.
Exemptions (*q.v.*), Chapter X., 213.

LEGACY DUTY—*continued.*
Forms, 222.
Gifts subject to maintenance, 170.
History, 165.
Interest, 223, 234.
Limitation of liability, 212.
One per cent. rate, when chargeable, 178, 219.
One per cent. rate not chargeable under will of testator dying before 30th April, 1909, 181.
Payable on each devolution, 206.
Payment by instalments, 194, 197, 199, 224.
Periodical payments, 198.
Power of appointment, 174, 206, 227.
Practice (*q.v.*), Chapter XI., 222.
Property on which payable, Chapter VII., 168.
Accretions, 185, 229.
Annuities, 194.
Conditional legacy, 170.
Covenant debt, 171.
Direction to pay debts of another, 170.
Direction to pay testator's own debts, 171.
*Donationes mortis causa*, 22, 168.
Estates *pur autre vie*, 201.
Gifts to professional executors, 172.
Interests in expectancy, 192, 232.
Personal estate directed to be invested in real estate, 200.
Personal property under wills and intestacies, 168.
Residue, 168, 186.
Settled fund, 196, 204.
Provision for, in administration action, 208.
Rates and amount, Chapter VIII., 177 (*see also* RATES).
Release of debt, 169.
Remission, 193.
Repayment, 211, 233.
Secret trust, 176.
Soldiers and sailors, 122.
Value, 185, 225.
When payable, 184, 202, 222.
On death of life tenant, 188, 231.
When paid by way of annuity, 193, 195, 199, 223, 230.
When paid on *corpus*, 195, 230.

LEGATEE:
Description of, in account, 222.
Liable to reimburse executor on receiving legacy without deduction, 203.
Marrying relation of testator, 184.
Refusing to give receipt, 207.
Relationship incorrect, correction of duty, 210, 233.
When accountable, 203, 204.

LEGITIMACY, 177, 284.

LIABILITY (*see* ACCOUNTABLE PERSONS *and* LIMITATIONS).

LIFE ASSURANCE (*see* POLICY OF ASSURANCE).

LIFE INTEREST:
Allowance against interest in expectancy, 85, 161.
As affecting S.E.D., 133.
Determinable, 51, 130, 161, 192, 200.
Disclaimer of (S.E.D.), 135.

LIFE TENANT:
E.D. Accountable for, 102.
Entitled to share of deceased beneficiary, 62, 63.
Mortgage by remainderman and, 90, 155.
Power of raising, 107.
S.E.D. Becoming entitled to absolute interest, 135.
None where husband or wife the only, 129, 138.
L.D. On death of, 188, 231.
Form of account, 231.
S.D. Accountable for, 286.
Duty a charge on his interest, 288.
Mortgage by life tenant and reversioner, effect of, 280.

LIMITATION (of liability for):
E.D. Beneficiaries under will, 110.
Executors and trustees, 110.
Mortgagees, 111.
Purchasers and alienees, 111.
L.D. 212.
Settlement of account, 212.
S.D. Executors and trustees, 290.
Purchasers and mortgagees, 288.
Successor under deed, 289.
Successor under will, 290.

LIMITATIONS, STATUTE OF: Does not apply to Death Duties, 113, 288.

LINEAL ISSUE (*see* CHILDREN *and* GRANDCHILDREN *and* ONE PER CENT. L.D. AND S.D.).

LUNATIC:
Competent to dispose, 16.
Not *sui juris*, 16.
Payment into Court of legacy of, 210.

MAINTENANCE:
Gift for, liable to L.D., 170.
Periodical payments for, 198.

MANAGEMENT: Expenses of, when deductible, 87, 305.

MANOR, 272.

MANUSCRIPTS (*see* WORKS OF ART ETC.).

MARINES (*see* SAILOR).

MARRIAGE:
Gifts *inter vivos* in consideration of, exempt from E.D. and S.E.D., 23, 119, 137.
Rate of L.D. as affected by, 182, 184.
Rate of S.D. as affected by, 284.
Stamp Duty on gifts in consideration of, 131.

MARRIED WOMAN (*see also* HUSBAND AND WIFE):
Competent to dispose, 20.
Domicil of, 221.
Dower and curtesy estates, 63.
Exemption, 21.
Policies under Married Women's Property Act, 1870, 44.

MEMORIAL
In church, L.D., 187.
On obtaining second grant of probate, 163.

MINES, 272.

MISTAKE (*see* CORRECTIONS).

MIXED FUND, 58, 60.

MONEY:
Consideration in money, 239 (*see also* CONSIDERATION).
E.D. General power to charge, 20.
Left to pay L.D. or S.D., 217, 298.

MONUMENT, 187, 228.

MORTGAGE:
E.D. Foreign, when liable, 12.
Interest in expectancy, before F.A. 1894, 125.
Settled property, deduction for, 90, 155.
When allowable in fixed duty cases, 68, 70, 92, 155.
S.D. By life tenant and reversioner, 280.
Created by expectant successor, 270, 278, 280, 283.
Predecessor when paid off, 250.

MORTGAGEE:
As to notice, 112.
Limitation of liability, 111, 288.
Not liable to S.D. unless he forecloses, 280.
Reversion before F.A. 1894, 125.

MOURNING, 155, 228.

MOVEABLE PROPERTY (*see also* PROPERTY OUT OF U.K.):
Definition, 10.
Exemption from E.D., 10, 20, 120.
Exemption from L.D., 166, 173, 220.
Exemption from S.D., 250.

MUNICIPAL CORPORATION (*see also* WORKS OF ART ETC.):
Chattels given to, exempt, 78, 123, 216, 297.

NATIONAL INTEREST (*see* WORKS OF ART ETC.).

NATIONAL PURPOSES (*see* WORKS OF ART ETC.).

NECESSARY OUTGOINGS, 91, 265, 269.

NEXT PRESENTATION, 8, 9, 176.

NOMINATION POLICY, 44.
Estate by itself, 73.
Small sum, 123.

NORMAL EXPENDITURE (*see* GIFTS INTER VIVOS).

NOTICE, 103, 112, 289.

OATH (*see* CORRECTIONS).

OBJECTS OF NATIONAL ETC. INTEREST (*see* WORKS OF ART ETC.).

OFFICE HOLDER:
Exempt from E.D., 49, 120.
Trustee, entitled to annuity under a deed, 49, 120.

OFFICER: Partial exemption from Death Duties, 122.

ONE PER CENT. L.D. AND S.D.:
Allowance against E.D., 127.
Exemption, 122, 182, 219, 255, 275, 300.
In s. 33 Wills Act cases, 10, 174, 247.
Under F.A. 1910, 178, 181, 219, 254 *et seq.*, 300.
Under settlement where E.D. paid, 55.

OPTION
As to allowance against E.D. of 1 per cent. L.D. or S.D., 127.
Soldier or sailor dying on active service, 122.
To defer payment of E.D. and S.E.D. on interest in expectancy, 84, 134, 146.
How exercised, 85, 146.

ORDERS IN COUNCIL:
E.D. Allowance of Colonial duty, 89, 90, 150.
List of British Possessions to which s. 20 applied by, 150.

ORIGINAL SITE VALUE, 311.

OUTGOINGS, 86, 151.
S.D. Account, 269, 304.
Timber account, 265.

OVERPAID DUTY (*see* CORRECTIONS).

PARENT: Purchase in joint names by, 34.

PAROL TRUST, 50.

PARTNERSHIP:
Foreign, real, or personal estate in British, liable to E.D., 11, 15, 119.
Goodwill, 145.
No survivorship between partners, 35.
Real estate devolves as personal estate, 11, 169.
S.D. under, 240.
Value for E.D. of assets of, 145.

PASSING: Meaning of, 6.

PAYMENT: Time for payment of L.D., 185, 203.

PAYMENT IN OR OUT OF COURT:
Legacy, 210.
Provision for Death Duties on, 208, 210.

PENALTY
For omitting receipts for L.D., 209.
Waiver of, 210.

PENSION:
British and Indian military, exempt, 46, 124, 125.
Charitable, exempt, 49.
State, how E.D. paid, 65.

PERPETUAL ANNUITY:
State, how E.D. paid, 65.
S.D. 241, 307.

PERSONAL COVENANT: Incidence of, on gifts with reservation, 29.

PERSONAL PROPERTY:
E.D. Definitions for E.D. and S.D., 8, 237.
Directed to be invested in real estate, 200.
Free, executor accountable, 99.
Free, beneficiaries not accountable, 99.
L.D. Exempt where domicil out of U.K., 173, 220
Under wills and intestacies, 168.
S.D. By way of life interest, 268, 303.
*Corpus*, on, 265, 303.
Deduction of E.D. and S.E.D., 265, 268, 300 *et seq.*
Settled, when duty payable on *corpus*, 265, 268.

PLATE (*see* WORKS OF ART ETC.).

POLICY OF ASSURANCE:
E.D. Heading "G.," 37.
Deduction of mortgages on, in fixed duty cases, 70, 92.
*Donatio mortis causa*, 22.
Foreign office, in, 15, 46.
Gift within three years, 39.
Insured domiciled out of U.K., 38.
Married women, 44.
On deceased's life, free estate, 37.
On life of another, not a reversion, 9, 38, 86.
Provided by deceased, 39.
Provision must be substantial, 40.
Settled, 38.
Value, 144.
S.D. Exemption, 299.
Gift of, 244, 299.

POSSESSION (adverse): Predecessor, 239.

POST OFFICE:
Money in, *donatio mortis causa*, 22.
Small sums, 123.

POSTPONEMENT OF PAYMENT:
E.D. and S.E.D. on reversions, 135.
L.D. on reversions, 192.

POWER
Of raising E.D., 101, 107.
Of revocation, 18, 30.
To charge money liable to E.D., 20.
To set apart capital for annuity, incidence of S.E.D., 133.

POWER OF APPOINTMENT:
E.D. General, definition of, 19.
Executor accountable where exercised over personal property, 99, 106.
Exemption, 19.
No E.D. where released within three years, 30.
Person having, is competent to dispose, 19.
Property out of U.K., 20.

POWER OF APPOINTMENT—*continued.*
S.E.D. 132, 134.
L.D. Under general, 174, 206, 227.
Under limited, 175.
S.D. Under general, 246, 252.
Under limited, 247.
Overriding, 281.

POWER OF SALE shifts claim for S.D. to proceeds, 245, 274.

PRACTICE:
E.D. Chapter VI., 139.
Assessment and payment, 163.
Commutations, 85, 96, 160.
Corrections, 94, 156, 157.
On obtaining further grant, 162.
To obtain remission of, on works of art &c., 124.
S.E.D. 158.
Annuities, 159.
Corrections, 159.
L.D. Chapter XI., 222.
Abatement of legacies, 217.
Annuities, 200.
Contingent legacies, 198.
Corrections, 210, 233.
Interests in expectancy, 192, 232.
Payment of duty out of fund in Court, 208.
Relationship incorrect, 210.
S.D. Chapter XVI., 302.
Contingent succession, 267.

PREDECESSOR (*see also* SUCCESSION DUTY):
Also the successor, 247, 282, 299.
As to mortgage paid off, 250.
Definition, 237.
Entails, 238, 283.
Joint, 250.
Joint property, 243.
Person taking wrongful possession, 239.
Power of appointment, 246, 252.
Under devolution, 238.
Under resettlement, 283.

PRINCIPAL VALUE (*see also* VALUE):
E.D. 81, 141 *et seq.*
Agricultural property, 86, 152.
Interests in expectancy, 82, 146.

PRINTS (*see* WORKS OF ART ETC.).

PRIVATE COMPANY (*see* COMPANY).

PROBATE:
Administering without, 38, 98, 203, 206.
English grant not essential for policy in English office of domiciled foreigner, 38.
Inland Revenue affidavit required, 97, 101, 139.
Separate will for foreign property, 99.
Time for taking out, 101.

PROBATE DUTY:
Examples of incidence of, 58.
Exemption from E.D. of property which has borne, 57, 119.
Explanation, 57.
Rate, 67.
When still payable, 58.

PROMISSORY NOTE, 21.

PROPERTY:
E.D. Liable, Chapter I., 6.
In which deceased never had an interest, 73.
Of which deceased competent to dispose, 16, 97.
Passing, in which deceased had an interest in expectancy, 85.
Passing or deemed to pass, 6.
Passing to executor as such, what is, 106.
Executor accountable, 98, 106.
Foreign assets are not, 100.
Settled otherwise than by will of deceased, 77.
Trust, exempt, 31, 121.
Form of Inland Revenue affidavit, 141.
L.D. In which deceased never had an interest, 178.
S.D. Of no annual value, 271.
Property liable to L.D. exempt, 276, 296.

PROPERTY OUT OF U.K.:
E.D. Heading "B.," 10.
Accountable parties, 98, 99.
A charge (except as to Colonial assets), 100, 106.
Allowance of Colonial duty, 89, 150.
Allowance of Consular Court fees, 90, 150.
Deductions, 89, 149.
Domicil, 11.
Free estate, when liable, 10.
General power over, 20.
Settled, 12.
Value, 149.
When exempt, 10, 119, 120.
S.E.D. Colonial duty, when allowed against, 89.
Incidence of, 135.
L.D. Exemption of personal, where domicil out of U.K., 173, 220.
How domicil determined, 220.
S.D. Absolute gifts, 250.
Settled property, 251.

PROVIDENT FUNDS, 44.
Estate by itself, 74.

*PUR AUTRE VIE* ESTATE:
E.D. 8, 48.
L.D. 201.

PURCHASE for full money consideration not liable, 42, 46, 48, 120, 239, 298 *et seq.*

PURCHASER:
E.D. Certificate of discharge, 113, 115, 162.
Exemption, 27, 42, 46, 48, 120.
Interest in expectancy bought before F.A. 1894, 125, 279.
Limitation of liability, 110.
Notice, 112.
When accountable for, 102, 103.
When a charge on property sold, 110.
L.D. Accountable for, 203, 207.
No claim to reimbursement, 207.
S.D. Commutation necessary, 274.
Death of, 278.
Liability of, 245, 286.
Limitation of liability, 288.
Reversion before F.A. 1894, 279.

RATES, 67, 177, 254.
E.D. *Ad valorem*, 67.
Advowsons, 9, 125.
Fixed duties, 68.
On accruer also under s. 33 Wills Act, 10.
Value of timber not taken into account, 92.
L.D. One per cent. rate when chargeable, 178.
Prior to 30th April, 1909, 183.
S.D. Commutations, 275.
Prior to 30th April, 1909, 255.
When higher rates payable, 91, 96, 126, 254, 275.
Where successor also predecessor, 282.
Where succession transmitted, 276 *et seq.*

REAL ESTATE:
E.D. Acceptance in satisfaction of E.D., S.E.D., or S.D., 93, 293.
A charge, 106.
Appeal as to value, 116.
Deductions, 151, 155.
Definition for, 7.
Formalities for gift of, 31.
Government valuation, 153.
Instalments, 92.
Interest, 92.
Out of U.K., when liable to, 11, 12, 14, 15, 119.
Particulars required, 86, 151, 155.

REAL ESTATE—*continued.*
E.D. Repayment by devisee, when paid by executor, 107.
Timber, 91, 155.
Trust for sale, 60.
Value, 86, 151, 152.
S.E.D. A charge, 105.
Incidence of, on annuities charged on, 133.
S.D. Basis of calculation, 262, 266.
Cesser of annuity charged on, 307.
Deduction of E.D. and S.E.D., 263, 304.
Definition, 237.
Devise of, preserved from lapse, 247.
Formerly liable to L.D. when directed to be sold, 169.
Form of account where directed to be sold, 306.
Instalments, 262, 270.
Resettlement tenant in tail regarded as predecessor, 283.
Timber, 264, 299.
Trust for sale, 263.
When a charge, 287.

REALISATION: Costs of, not deductible against value for E.D., 81.

RECEIPT:
L.D. 208, 209.
Not liable to Stamp Duty, 210.
S.D. 291.

RECOVERY
By executors of E.D. from owner, 107.
Proportion of E.D. on rent charge or annuity, 108.

RECTOR:
Benefice, not liable to E.D., 49.
Deduction for dilapidations, 154.

RELEASE:
E.D. Of life interest, 64, 95.
Exempt when more than three years before death, 28, 30, 64.
Of power of appointment three years before death, 30.
S.E.D. Of life interest, 135.
L.D. Of debt, 169.
S.D. Of life interest, 274.

REMISSION:
Death Duties in the case of soldiers and sailors, 123.
Death Duties on works of art until sale, 66, 123, 124.
Duty after twenty years, 111, 193, 273.
Interest, 111, 193.

RENT CHARGE (*see also* ANNUITY *and* JOINTURE):
E.D. Apportionment of, 108.
Cesser of, 47, 157.
Value of benefit arising, 47.

REPAIRS: Deduction in ascertaining value, 86, 151, 268, 304.

REPAYMENT (*see also* CORRECTIONS):
E.D. 94, 156.
Practice, 156.
Stocks and shares when sold, 144.
S.E.D. 131, 159.
Practice, 156.
L.D. 211, 233.
Death of annuitant before all instalments payable, 199, 234.
On happening of contingency, 197, 199.
S.D. Commutation cases, 95.
Overpaid duty, 303, 305, 309.

REPRESENTATION (*see also* PROBATE):
Form for second grant, 141, 162.
Grant of, required, 98.
Limited grant of, E.D. to be paid in full, 98.
When to be taken out, 101.

RESERVATION:
E.D. Gifts with, 24 *et seq.*
S.D. Gifts with, 240, 307.
Must be enforceable, 241.

RESETTLEMENT:
Effect of, on S.D., 283.
Tenant in tail regarded as predecessor under, 283.

RESIDUE:
Cannot be given free of L.D., 190.
Compounded, 191.
Deduction of capital set apart for annuity, 200, 230.
Deduction of E.D. and S.E.D., 136, 187, 226.
Deduction of value of annuity, 229.
Deductions, 187, 195, 226.
Form of account, 225, 230.
Includes lapsed legacies, 175.
Interest in expectancy may be included, 192.
Liability to, L.D., 168, 186.
Settled on persons liable to different rates, 195, 230.
Settled on persons liable to same rate, 195, 230.
Should include all accretions since death, 186, 187, 229.

RESULTING TRUST: Under joint purchase or investment, 35.

RETAINER : L.D., on, 184, 186, 203, 209, 223.

RETURN OF DUTY (*see* Repayment).

REVERSION (*see* Interest in Expectancy).

REVERSIONER :
E.D. Dying before F.A. 1894, old duties payable, 59.
Effect of death of, where old duties paid, 58.
Where E.D. paid, 62.
Exemption where also the settlor, 61, 63.

REVERTER :
E.D. To settlor exempt, 53, 119.
But not where other interests created, 53.

REVOCATION : Power of, incidence of E.D., 18, 30.

ROYAL CHARTER (*see* Crown Entails *and* Act of Parliament).

ROYAL FAMILY :
Exemption from L.D., 213.
Exemption from S.D., 295.

SAILOR :
Domicil of, 221.
Dying on active service, 122.
Partial remission of Death Duties, 122.
Small sums, 123.

SALE :
E.D. Commutation on, 95, 160.
Exemption, 27, 46, 48, 120.
Expenses of, not a good deduction, 81, 142.
Interest in expectancy before F.A. 1894, 125, 279.
Liability of purchaser, 27, 102, 103, 120.
Notable works of art &c., 66, 100, 124.
Powers of raising by, 101, 107.
Real estate, all instalments payable on, 93.
When charge shifts to proceeds on, 95, 110.
S.D. Commutation, 95, 274.
Deduction of expenses of, 306.
Effect, 245, 290.
Exemption, 239, 298, 299.
When charge of duty shifts to proceeds on, 245, 274, 290.
I.V.D. Substituted site value on, 311.

SAVINGS BANK (*see* Post Office Savings Bank).

SCIENTIFIC COLLECTIONS (*see* WORKS OF ART ETC.).

SECRET TRUST, 176, 242.

SETTLED LAND ACTS: Sale under, charge of E.D. or S.D. shifts to proceeds, 95, 274, 291.

SETTLED PROPERTY:
E.D. Change of security, 121.
Commutation, 95, 160.
Contingently, 131, 159.
Definition, 50, 130.
Dower and curtesy estates, 63.
Enlargement of interest, 52.
Executor may pay E.D. on request, 100.
Exempted from aggregation, when, 73, 78.
Exemption where E.D. once paid, 17, 55, 121.
But not where deceased competent to dispose, 56.
Exemption where old duties paid, 57, 119.
Failure of interest, 51, 121.
Joint property, 35, 77.
Mortgages, 90.
Out of U.K., 12, 119.
Powers of raising, 107.
Release of life interest more than three years, 64.
Reverter to settlor, 53.
S.E.D. Incidence of (*see* SETTLEMENT ESTATE DUTY).
L.D. Beneficiaries all liable to same rate, 195, 230.
Beneficiaries liable to different rates, 195, 199, 230.
Furniture &c., 204, 215.
Legacies, 205, 223.
Value, 188, 222.
S.D. Acceleration, 280.
Effect of sale, 245, 290.
Foreign property, 251.
Mortgage by life tenant and reversioner, 280.
Predecessor as to mortgages paid off, 250.
Property taken out of settlement, 281.
When duty taken on *corpus*, 265.

SETTLEMENT:
E.D. Act of Parliament or Royal grant, 65, 122.
By husband or wife on the other, 54, 126.
By surviving spouse, 54.
Commutation, under, 96, 160.
Contingent, 131.
Failure of interest under, 51.
Foreign, 12, 119.
Limitations under, continuing to subsist, 17, 20, 51.
Policies, 40.
Power of revocation, 18, 30.
Property withdrawn from, 95.
Sale of, under power, shifts claim to proceeds, 95, 110.
Surrender of life interest, 31, 49, 64.
Formalities, 50.

SETTLEMENT ESTATE DUTY :
Acceptance by Commissioners of real and leasehold property in satisfaction of, 93.
Accountable parties, 104, 136.
Allowance of Stamp Duty against, 130.
Annuities, 132, 159.
Apportionment, 108.
Contingent settlement, 131, 159.
Corrections, 157.
Deduction against value for L.D., 190, 224, 229, 231.
Deduction against value for S.D., 263, 268, 302 *et seq.*
Disclaimer of life interest, 135.
Exemptions, 137 (*see also* Exemptions).
Foreign domicil, 135.
Form of account, 158.
Free of duty, 136.
General power of appointment, 132, 134.
Gifts *inter vivos* settled, 135.
Incidence of, 129, 130, 132.
Instalments, 159.
Interests in expectancy, 134.
Life tenant entitled to absolute interest in future, 135.
On covenant debt, borne by settled fund, 88.
Rate, 129.
When Colonial duty allowed against, 89, 150.
When payable, 134, 137.

SETTLOR : Reversion of property to, 61.

SEVERANCE (*see* Joint Property).

SHARES :
Formalities for gift of, 31.
Situation of, 14.
Value for L.D., 82, 142, 143.

SHIPS : Value for E.D., 146.

SLICE, 47, 109, 155, 157, 241, 307.

SMALL ANNUITIES : E.D. exemption, 45, 125.

SMALL ESTATES :
E.D. Deductions where fixed duty paid, 68, 70, 92, 155.
Not exceeding £300 or £500 gross, 68, 92.
Not exceeding £1000 net, 71, 74, 148, 300.
Exemption from aggregation, 71, 74, 76, 148.
Exemption from other duties, 71, 76, 219, 295, 300.
Not exceeding £100, 68, 123, 141, 214, 295.
S.E.D. Exemption, 137.

SMALL GIFTS in lifetime not liable to E.D., 22, 24, 119.

SOLDIERS:
Common soldier, meaning of, 122.
Domicil of, 221.
Dying on active service, 122.
No E.D. on British Government pensions, 125.
No E.D. on Indian Government pensions, 46, 124.
Partial remission of Death Duties, 122.
Small sums, 123.

SOLICITOR
In administration action (L.D.), 208.
L.D. on fees, 172.
Misappropriation of legacy, 207.
Not accountable for E.D., 102, 104.
Notice to, 104.

SPECIAL OCCUPANT, 201.

SPECIFIC BEQUEST, 185, 214, 223.

STAMP DUTY:
Allowance against S.E.D., 130.
On gifts in consideration of marriage, 131.

STOCK-IN-TRADE: Value for E.D., 145.

STOCKS (*see* SHARES).

STRANGER IN BLOOD:
L.D. Rates of, 176.
Relations of husband or wife of testator are, 177.
S.D. 254, 255, 261.

STRICT SETTLEMENT, 283.

SUBSTITUTED SITE VALUE, 311.

SUCCESSION:
Acceleration of, 280, 281.
Contingency, subject to, 266.
Defeated, 245, 281.
Deferred, 243, 247.
Definition, 237.
Enlargement of interest, 281.
Essentials of, 238.
First (*see* FIRST SUCCESSION).
Foreign property, 250.
Joint predecessors, 250.
Must be referred to on death, 242.

Succession—*continued.*
New, 277.
Notice of, to be given, 291.
Of children preserved from lapse, 247.
Subject to condition, 273.
Subject to outstanding charge, 248, 283, 285.
To ground rents, 243, 249.
Transmission on death, 276, 277.
Transmission on sale, 276, 277.

SUCCESSION DUTY:
Acceleration, 280.
Acceptance by Commissioners of property in payment of, 293.
Accountable persons, Chapter XIV., 286.
Agricultural property, 264, 305.
Allowance of 1 or 1½ per cent. against E.D., 127.
Assessment, 302 *et seq.* (*see also* Practice).
Basis of calculation, 262.
Gifts with reservation, 241.
Personal estate, where duty taken by way of life interest, 268.
Personal estate, where payable on *corpus*, 265.
Real estate, where successor competent to dispose, 262, 278.
Real estate, where successor not competent to dispose, 266, 278.
Certificate of discharge, 292.
Cesser of outstanding interests, 247, 307.
Charge on property shifts on exercise of power of sale, 245, 274, 290.
Commutations, 95, 273, 308.
Composition, 273.
Compromise, 262.
Corrections, 272, 309.
Covenant debts, 245.
Crown debt, is a, 286.
Deduction, against annuities, 302.
E.D. and S.E.D., 262 *et seq.*, 302 *et seq.*
Incumbrances, 270, 283.
In timber accounts, 265.
Definition of real and personal property, 237.
Discount, 262, 271, 303.
Divorce, effect of, 284.
Domicil, effect of foreign, 251.
Evasion, 240.
Exemptions (*see* Exemptions).
Forms in use, 302 *et seq.*
Incidence of duty as between successor and purchaser, 291.
Instalments, 262, 270, 302 *et seq.*
Interest, 262 *et seq.*, 309.
Limitation of liability of purchasers and mortgagees, 288.
Marriage, effect of, 284.
Power of appointment, 246, 252.
Property of no annual value, 271.
Property on which payable, Chapter XII., 237.
Advances, 281.
Chattels in specie, 297.

SUCCESSION DUTY—*continued.*
Property on which payable—*continued.*
Entailed property, 238, 283.
Gifts *inter vivos* with reservation, 240.
Joint property, 243.
Manors, 272.
Mines, 272.
Personal estate, 265.
Policies of assurance, 244.
Property out of U.K., 14, 250.
Where deceased has a general power of appointment, 252.
Real estate, 262, 268.
Timber, 264, 272, 299, 308.
Rates and amount, Chapter XIII., 254.
In commutation cases, 96, 275.
When higher rates payable, 91, 96, 126, 254, 275.
Remission, 273.
Remission in the case of soldiers and sailors, 122.
Sale before F.A. 1894, 279.
Secret trust, 242.
Separate assessment, 292.
Settled property mortgaged, 91, 280.
Transmission of succession on death, 276, 277.
Transmission of succession on sale, 276, 277.
Under resettlements, 283.
Value, 262 *et seq.*, 302 *et seq.*
When a charge, 287.
When payable, 285.

SUCCESSOR:
Accountable for S.D., 286.
Also predecessor, no S.D., 247, 282, 299.
Exceptions, 282.
Annuity created by, 282, 283.
Charges created by, 247, 249, 278, 283.
Death of expectant, 276 *et seq.*
Definition, 237.
Giving up property, allowance for, 273.
Improvements by, 270.
Individual benefit, 258.
Limitation of liability under deed, 290.
Limitation of liability under will, 290.
Sale by, 276.

*SUI JURIS*, 17, 55.

SURETY DEBT (*see* GUARANTEE).

SURRENDER:
No E.D. when life interest surrendered more than three years before death, 31, 49, 64.
Of life interest, commutation, 95.
Of life interest, when no S.E.D., 135.
Of lease, deduction for, against value for E.D., 154.
Deduction for, against residue, 228.

SURVIVORSHIP (*see also* JOINT PROPERTY):
Policies, 44.

TENANCY IN TAIL (*see* ENTAILED PROPERTY).

TENANT FOR LIFE (*see* LIFE TENANT *and* SETTLED PROPERTY).

TENANT RIGHT: Value, 145, 229.

TERMINABLE CHARGE:
Deduction against value for E.D., 154.
Power to raise E.D. by means of, 107.

TESTAMENTARY EXPENSE:
Deduction against residue, 187, 228.
E.D. on *donatio mortis causa* is not, 23, 227.
E.D. on interest in expectancy in personal estate is, 86.
S.E.D. is not, 137.

TIMBER, 91, 155, 264, 299.
Deductions, 264, 265, 272, 299, 308.
Not aggregable, 91.
On sale as a whole, 92, 265.
Where successor takes for life, 272.

TIME
For payment of E.D., 101.
For payment of L.D., 184, 202, 222.
For payment of S.D., 285.
For payment of S.E.D., 104, 134, 137.

TITHE, 86, 151.

TREASURY, 66, 77, 122, 123, 124, 297.

TRUSTEE:
E.D. Accountable for, 102, 156.
Exemption where deceased merely, 31, 120.
Limitation of liability under will, 110.
On cesser of annuity under deed, 49, 120.
Where settlor trustee dies more than three years after settlement, 31.
L.D. Accountable for, 204, 205.
S.D. Exemption from, 298.
Limitation of liability, 290.

TUTOR, 286.

UNDERWOOD, 92, 265.

UNITED KINGDOM: Definition for Death Duties, 16, 220.

UNIVERSITY :
Chattels given to, exempted from E.D., 77, 123.
Exempted from L.D., 216.

VALUATION :
Actuarial, 148.
Government valuation of real estate and leaseholds, 86, 153.
I.V.D. Valuation for, 311, 314.
Professional, not essential, 86, 142, 145, 226.
When costs paid by Commissioners, 82, 142.

VALUE (*see also* PRINCIPAL VALUE) :
E.D. Agricultural property, 86, 152.
Annuity ceasing, 47, 157.
Country cottages, 86, 153.
Crown entails, 65.
Foreign property, 149.
Furniture, 145.
Goodwill, 146.
Interests in expectancy, 82, 147, 148.
Large holdings, 82, 142.
Of property passing in which deceased had a reversion, 86.
Partnership assets, 145.
Policies, 144.
Property passing exceeding £15,000, 178, 219, 256, 301.
Real estate and leaseholds, 86, 151, 152.
Average number of years' purchase for, 152.
Ships, 146.
Stock, 145.
Stocks and shares, 142.
Timber, 91, 155.
S.E.D. 134, 158.
Annuities, 160.
L.D. Unrealised assets in residuary account, 226.
S.D. Acceleration, 281.
Enlargement, 282.
Land yielding no income, 271.
Manors, 272.
Mines, 272.
Property subject to annuity, 250, 307.
Timber, 264, 308.

VALUERS : Reference to Valuation Branch, 86, 153.

VENDOR AND PURCHASER (*see also* PURCHASER *and* SALE) :
Incidence of L.D. between, 203, 207.
Incidence of S.D. between, 245, 286, 291.

VOLUNTARY CHARGE : Not deductible against E.D., 87, 154.

WIDOW : L.D. and S.D., exemption where benefit does not exceed £2000, 180, 258.

WIFE (*see also* DOWER *and* HUSBAND AND WIFE) :
Policy effected and kept up by her for husband's life, no E.D., 44.

WILL :
Foreign domicil, 173.
Foreign property under separate wills, 99.
Limitation of liability for E.D. under, 110.
Limitation of liability for S.D. under, 290.
L.D. Limitation of liability under, 212.
Terms of will alone to be regarded, 176.
When payable under, 184.

WILLS ACT, s. 33.
Incidence of E.D., 9.
Incidence of L.D., 10, 174.
Incidence of S.D., 247.

WOODLANDS (*see* TIMBER).

WORKMEN'S COMPENSATION ACT : Compensation on death not liable to E.D., 45, 120.

WORKS OF ART ETC. :
E.D. Ascertainment of value, 145.
Notable, beneficiary accountable on sale, 100.
Exemption from aggregation, 66, 78.
Exemption from duty until sale, 66, 78, 124.
When given for national purposes, 77, 123.
L.D. Accountable party, 204.
Exemption, 216.
Remission by Treasury, 216.
S.D. 297.

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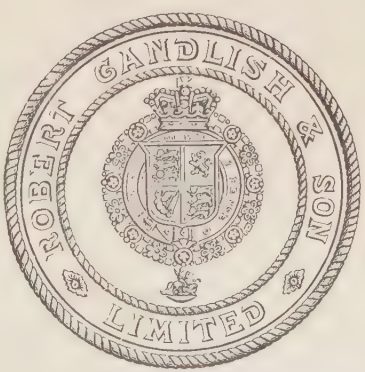


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